

California High-Speed Train Project



Request for Proposal for Design-Build Services

RFP No.: HSR 11-16

Book 3, Part D, Subpart 1 - Third Party Entities Master and Cooperative Agreement Updates

HSR13-06 - EXECUTION VERSION

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| 1 | 04/30/2012 | Addendum 1 |
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| 4 | 10/29/2012 | Addendum 5 |
| 5 | 11/13/2012 | Addendum 6 |
| 6 | 12/14/2012 | Addendum 7 |
| 7 | 01/08/2013 | Addendum 9 |
| 8 | 07/31/2013 | Execution Version |

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1 Addendum No. 9 - Summary Update

Addendum No. 9 is a full replacement for Third Party Entities Master and Cooperative Agreement Updates. Addendum No. 9 supersedes the initial release and all previous revisions. Third party entities not listed below have no known interaction with the Project and were moved to a different part of the RFP, do not require a Master/Cooperative Agreement, or has been removed from the scope of work.

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



2 City of Fresno Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

City of Fresno

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| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and

City of Fresno _____,
body politic and municipal corporation of the State of
a California _____ whose principal mailing address is
2600 Fresno Street, Fresno, CA 93721 _____,
hereinafter referred to as the "City".

RECITALS

The City owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission; and

The Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the City's Facilities; and

The Authority and the City desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the City's Facilities.

Funding for the HST Project is available pursuant to the authorization established through Proposition 1A, approved by California voters in the general election of November 4, 2008.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the City agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

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1.1 Authority's Contractor

1.2 The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work, as defined herein, other than any Excluded Entity. Authority Designated Holiday

"Authority Designated Holiday" means New Year's Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

"Betterment" means any improvement to the City's Facilities that is requested by City and is required to be provided by the Authority pursuant to any fully executed Task Order, as defined herein, that identifies such improvements as Betterment.

Betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the City at its own expense, which are in effect as of the date of execution of the Cooperative Agreement.

1.4 CEQA

"CEQA" means the California Environmental Quality Act (California Public Resources Code, sections 21000 et seq.) that requires State and local agencies to identify the significant environmental impacts of their actions and to mitigate those significant impacts, if feasible.

1.5 City

"City" means the City of Fresno.

1.6 Completion of Work

"Completion of Work" means all Parties to this Agreement have met all scope, cost and schedule commitments.

1.7 Days

"Days" means calendar days, unless otherwise stated.



1.8 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.

1.9 Facility

“Facility” or “Facilities” means any Utility, as defined herein, and/or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.10 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

1.11 Facility Work Cost

“Facility Work Cost” means all of the cost associated with fulfilling all scope and cost commitments.

1.12 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under local, state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.13 HM Management Activities

“HM Management Activities” means the management activities related to Hazardous Material including, without limitation, any necessary manifest requirements and disposal facility requirements.



1.14 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by notice to owner or otherwise) by an Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.

1.15 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.16 Obligations

“Obligations” means all responsibilities included in this Agreement.

1.17 Party

“Party” or “Partner” refers to the Authority or the City, as the context may require and “Parties” or “Partners” means the Authority and the City, collectively. The term Partners only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner’s individual actions legally bind the other partners.

1.18 Project Component

“Project Component” means a distinct portion of the planning and project development process of the HST Project.

1.19 Project Management Plan

“Project Management Plan” means a group of documents used to guide a project’s execution and control throughout the HST Project’s lifecycle.

1.20 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the City’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.21 Right-of-way of City

“Right-of-way of City” means a property right held by the City in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the City for the Facility to be located in a defined



area of real property, or a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Facility Owner does not include a franchise or license.

1.22 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the City’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.

1.23 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the City, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.24 Unforeseen Work

“Unforeseen Work” means any new and extra work determined essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.25 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all



electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.26 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.27 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE DONE

2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority’s Contractor and the City. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority’s Contractor. At a minimum, The Task Order shall set forth the arrangements among the parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination of Facility Work.

2.3 Betterment

Any Betterment shall be agreed upon in advance by the Partners and detailed in a Task Order along with costs and allocation of responsibility for such costs.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose in connection with. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the City shall be obligated to comply with the Authority’s determination.



2.5 Commencement of Construction

No Facility Work shall be commenced on any Task Order prior to City's approval of such Task Order.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by statute, superior rights, prescriptive rights or by permit, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the City, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the City's Facility is located.

The Authority may enforce any obligation of the City's franchise or encroachment permit grantees on any Authority property and right of way including requiring any person who has placed and maintained any pole, pole line, pipe, pipeline, conduit, street railroad tracks, or other structures or facilities whether under that or any franchise or permit to move it at his or her own cost and expense to such different location in the City's jurisdiction as specified in a written demand by the Authority. The Authority shall provide a reasonable time within which the Facility Work shall commence. Upon written request of Authority, City shall assist Authority in enforcing such rights by issuing to the relevant grantee any written Relocation notice required under the franchise or encroachment permit.

3.2 Authority's Expense

Unless the City agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights that the costs for such work shall be borne by the Authority.

3.3 City's Expense

Facility Work will be performed at the City's expense where:

- A. Facility Work is mutually determined herein to be a Betterment as defined in Section 1.3;
- B. The City is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the City; or
- D. The City agrees hereto.



3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the City in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the City of the claim and the City shall cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the City and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the City under this Agreement, the Authority may withhold reimbursement to the City until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.6 Disputes

The Authority and the City agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting City's Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the City disagrees with a determination or direction made by the Authority in connection with the Facility Work, the City shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the City may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the City. Failure of the Authority to provide a written



decision shall be deemed denial of City's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority, 42 days from the City's original written objection, the City appeals such decision by written notice to the Authority.

In connection with any appeal of the Authority's decision, the City shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of City's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the City, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the City's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the City with respect to the disputed matter as a direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the City's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the City shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.



4 PERFORMANCE OF WORK

4.1 General

Unless otherwise directed, all Facility Work (design and construction phases) or portion thereof may be performed by the City, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 City Performs Facility Work

When all or a portion of the utility work is to be performed by the City, the City agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Utility owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, City shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The City agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the City in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The City shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the City is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the City shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The City shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's



Contractor, the City shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the City shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance

The Facility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Facility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Facility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.



E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:

1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Facility Owner and the Authority shall be transmitted directly by the insurer to the Facility Owner and the Authority. The Facility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controlled insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the City agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," included herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the City for the cost of participation in the initial workshop and subsequent



stakeholder meetings shall be made, at the Authority's discretion by either the Authority or the Authority's Contractor.

Subject to the requirements of the Public Information Act, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 COST OF WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility, the Authority shall be entitled to credits as follows:
 - 1. The amount of any betterment to the utility Facility resulting from such relocation.
 - 2. The salvage value of any materials or parts salvaged and retained by City.
- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the City.
- C. A credit allowance for age shall not be applied to publicly owned sewers.
- D. Eligible City costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. City agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the City in the amounts as established for Facility Work performed by the City, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the City may be delegated to the Authority's Contractor; in such circumstances, the City agrees to the Authority's delegation of responsibility to the Authority's Contractor the responsibility to make reimbursement payments to the City.



If Facility Work is at the City's expense and is performed by the Authority or the Authority's Contractor, the City shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work less the credits as determined. At the Authority's discretion, the Authority's Contractor is authorized to accept such payment from the City; in such circumstances, the City agrees to the Authority's Contractor collection of reimbursement directly from the City.

5.3 Invoicing Procedures

The City will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

The City's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The City acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the City to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the City. In the event of a breach of this Agreement by the City, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The City shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the City to use due care in its dealings with others. The City shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The City shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The City shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-



of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the City and without any right of the City to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the City fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the City's sole expense.

- F. Except as otherwise provided, the City agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the City. The City shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

6.2 Default

In the event that the City breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by Law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the City may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the City to allow access to all public documents, papers, letters, or other material that is made or received by the City in conjunction with this Agreement.



If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the City, the Authority will notify the City in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Indemnification

Each Party shall hold harmless, and indemnify the other Party and its respective governing Boards, officers, officials, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the Authority will immediately forward the claim to the City. The City and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the City in the defense of the claim or to require the City to defend the Authority in such claim as described in this section. The Authority's failure to notify the City of a claim shall not release the City from any of the requirements of this section.

The City's obligation to defend and indemnify shall not be excused because of the City's inability to evaluate liability or because the City evaluates liability and determines the City is



not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the City. The City shall pay all costs and fees related to this obligation and its enforcement by the Authority. The Authority's delay in notifying the City of a claim shall not release the City of the above duty to defend.

6.4 Force Majeure

Neither the City nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a City related entity.

Provided that it is beyond its control and not due to an act or omission of the City related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Utility owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the City for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;



- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a City related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a City related entity and not listed in the definition of Force Majeure above.

6.5 City's Facility and Right-of-way

The City's Facilities shall at all times remain the property of and be properly protected and maintained by the City.

Whenever the City's affected Facilities are to be relocated from the existing Right-of-way of the City to a new location that falls outside such existing right-of-way of the City, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the City, without charge to the City or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the City for those rights previously held by the City in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the City shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the City's existing right-of-way so vacated.

If the existing Right-of-way of City includes fee title, the Authority shall acquire from the City, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the City those remaining property rights appropriate for the placement and operation of the City's Facilities in the Right-of-way of City.

Upon completion of Facility Work by the Authority, the new Facilities shall become the property of the City, and the City shall have the same rights in the new location that it had in the old location.

6.6 Applicability

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Facility Owner's Facilities to accommodate or permit construction of the HST Project.

Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Facility Owner or Excluded Entities with respect to Facilities pursuant to



arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

6.7 Agreement Final Expression of the Parties

This Agreement is intended to be the Partners' final expression and supersedes all prior oral understanding or writings pertaining to Facility Work. Partners acknowledge that the Authority is currently in the process of finalizing new regulations which will govern certain procedural aspects of Facility Work. To the extent that any such procedure is finalized, the Authority shall immediately notify the City of the new regulation and provide a copy of said regulation to the City. The Authority shall pay for any damages suffered by or costs incurred by the City for activities that may be required as a result of the Authority's policies and procedures. Such activities will be set forth in the Task Order specific to that Facility Work.

Partners will execute a formal written amendment if there are any changes to the commitments made in this Agreement.

Signatories may execute this Agreement through individual signature pages provided that each signature is an original.

A waiver of a Partner's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.

6.8 Severability

If any provisions in this Agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement. Governing Law and Venue

This Agreement shall be governed by the Constitution and Laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.9 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The City shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:





If to CITY:

City Name: CITY OF FRESNO

Person in Charge: Scott Mozier, City Engineer

Address: 2600 Fresno Street

Fresno, CA 93721

If to AUTHORITY:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

6.10 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.11 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the City and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the City shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the City's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."



- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.12 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

6.13 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.14 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.15 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the City shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

UTILITY OWNER:

Signature

Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority



Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title

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Appendix 1: Design-Build Procedures

1. PERFORMANCE OF THE FACILITY WORK

The method of performance to be utilized in the design and construction of the Facility Work, as described below, will be specified in the executed Task Order for the particular Facility Work contemplated.

The City agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the City, and (b) the Authority's Contractor's collection of reimbursement directly from the City having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work will be in accord with the following method:

The Authority's Contractor performs all design and construction services for the Facility Work with the exception of water wet ties.

- A. At such time as the Authority's Contractor has plans prepared to a level where the impact on the City's Facilities and the nature and extent of the Facility Work can be determined, hereinafter referred to as "Facility Plans", the Authority's Contractor will provide a copy of the Facility Plans to the City in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the City's standards.
- B. The City shall have **twenty (20)** working days from receipt of the Facility Plans to review them and provide comments to the Authority's Contractor and the Authority. The City shall also provide applicable technical provisions and standard drawings along with their comments.
- C. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the City. The final Facility Plans shall incorporate the comments of the City. Detailed list of final method of inclusion of the City's comments shall be provided to the City by the Authority's Contractor.
- D. The City shall have **twenty (20)** working days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the City's comments are not fully addressed or incorporated, the City shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the

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- Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- E. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the City. This section shall not apply until paragraph 2.E of Appendix A is satisfied.
 - F. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
 - G. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the City, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.
 - H. The City shall be entitled to have safe access to the work site for a reasonable number of representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The City's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
 - I. Upon completion of the Facility Work, the City agrees to accept ownership and maintenance of the constructed Facilities.
 - J. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
 - K. The Authority's Contractor shall provide the City with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.



Appendix 2: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means the City. The City, however, is not a contractor.

“State” includes Authority.

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SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS**1. ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

3. PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

5. WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the



United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

6. INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

7. WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.



Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

8. FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

9. REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- a. The total amount of ARRA funds received by Contractor during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A Description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;



- v. The Program source
- vi. An award title descriptive of the purpose of each funding action;
- vii. The location of the entity receiving the contract;
- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.



6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.



6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and



made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS:

Time is of the essence in this Agreement.

13. COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.



- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

SPECIAL TERMS AND CONDITIONS

1. AMENDMENT (CHANGE IN TERMS)

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

1. TERMINATION

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

2. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions

- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

3. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

4. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

5. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

6. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

7. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

8. RETENTION OF RECORD/AUDITS

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

9. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.
- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for



review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.

- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

10. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

11. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

12. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.



- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

13. CONFIDENTIALITY OF DATA

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

14. STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

15. DEBARMENT AND SUSPENSION CERTIFICATION

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;



- iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

16. CONFLICT OF INTEREST

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

HSR13-06 - EXECUTION VERSION



HSR13-06 - EXECUTION VERSION



Appendix 3: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

- A. **“Issues Resolution Ladder” (IRL)** – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. **“Stakeholder Implementation Plan” (SIP)** – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.
- C. **“Stakeholder Charter”** – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS



The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

DRAFT

HSR13-06 - EXECUTION VERSION



3 Comcast Cable Communications, LLC Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

Comcast

HSR13-06 - EXECUTION VERSION



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| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Agreement" or "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and

Comcast _____,
a _____ whose principal mailing address is
3055 Comcast Place, Livermore, CA 94551 _____,
hereinafter referred to as the "Facility Owner".

RECITALS

WHEREAS, the Facility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission ; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Facility Owner's Facilities; and

WHEREAS, the HST Project will be built in multiple phases; and

WHEREAS, the Authority and the Facility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Facility Owner's Facilities throughout the various phases of the HST Project..

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Facility Owner agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:



1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person, that enters into a contract with the Authority for the performance of Facility Work, as defined herein other than any Excluded Entity.

1.2 Authority Designated Holiday

"Authority Designated Holiday" means New Year's Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

"Betterment" shall mean any upgrading of a replacement Facility that is not attributable to the construction of the HST Project and is made solely for the benefit of and at the election of the Facility Owner, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

- A. Any upgrading necessary for safe and effective construction of the HST Project;
- B. Replacement devices or materials that meet equivalent standards although they are not identical;
- C. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- D. Any upgrading required by applicable laws;
- E. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
- F. Any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Facility Owner at its own expenses, which are in effect as of the date of execution of the applicable Task Order.

1.4 Days

"Days" means calendar days, unless otherwise stated.



1.5 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.

1.6 Facility

“Facility” or “Facilities” means any Utility, as defined herein, or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.7 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Built, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

1.8 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.9 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by a notice to owner or otherwise) by an



Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.

1.10 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.11 Party

“Party” refers to the Authority or the Facility Owner, as the context may require and “Parties” means the Authority and the Facility Owner, collectively.

1.12 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Facility Owner’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.13 Right-of-way of Facility Owner

“Right-of-way of Facility Owner” means a property right held by the Facility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Facility Owner for the Facility to be located in a defined area of real property, including but not limited to a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Facility Owner does not include a franchise or license.

1.14 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Facility Owner’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.

1.15 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Facility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.



1.16 Unforeseen Work

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.17 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.18 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.19 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.



2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority's Contractor and the Facility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority's Contractor. The Task Order will set forth among other things, the arrangements between the parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the Facility Work. Format of the Task Order and its content shall be mutually agreed upon by the Authority, the Authority's Contractor, and the Facility Owner.

2.3 Betterment Work at the Facility Owner's Request

Any work considered Betterment made at the Facility Owner's request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs to the Facility Owner.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Facility Owner shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by applicable law, including, without limitation, statute, superior rights, or prescriptive rights, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Facility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Facility Owner's Facility is located.

3.2 Authority's Expense

Unless the Facility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights the costs for such work shall be borne by the Authority.



3.3 Facility Owner's Expense

Facility Work will be performed at the Facility Owner's expense where:

- A. Facility Work is a Betterment as defined in Section 1.3;
- B. The Facility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Facility Owner; or
- D. The Facility Owner agrees to perform the work at its own expense.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Utility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Disputed Cost Liability

In circumstances where a dispute exists between the Parties as to whether the Facility Owner has a Prior Right to maintain and operate its facilities in their present location and which Party must bear the expense of Facility Work required for a Relocation pursuant to a Task Order, the Parties agree to proceed with the Facility Work required by the Task Order and to reserve the issue of liability for the cost of the Facility Work detailed in the Task Order as hereinafter provided. In such case, the Authority, either directly or through Authority's Contractor, shall advance funds for the cost of the Facility Work as if such costs were Authority's expense as provided in Section 3.2, of this Cooperative Agreement,

Authority and Facility Owner agree that after execution of the Task Order for Facility Work where cost liability is disputed, they shall negotiate in good faith with the goal of reaching an agreement as to the allocation of costs for the Facility Work. If Facility Owner fails to negotiate in good faith, or if no agreement is executed and delivered on or before ten (10) days after the date of completion of the Facility Work, then notwithstanding the disputes resolution process set forth in Section 3.7 of this Cooperative Agreement, Authority shall have the immediate right to pursue a determination of the cost responsibility through either mandatory binding arbitration (pursuant to the arbitration process set forth in Section 3.7) or through litigation in a court of competent jurisdiction, in Authority's sole discretion. It is further agreed by Facility Owner and Authority that in case of disputed liability, (a) neither the advance or return of funds pursuant to this Cooperative Agreement nor the performance by Facility Owner of the Facility Work shall be deemed a waiver, compromise or admission of liability, (b) the fact that such advance and/or return of funds and performance of Facility Work occur shall not be pertinent to and shall not be considered or offered as evidence regarding the issue of liability,



(c) the issue of liability shall be reserved for resolution by subsequent agreement, arbitration or litigation, and (d) the time for commencing an action for the recovery of any funds advanced by Authority for the cost of the Facility Work shall begin to run as of the tenth day after completion of the Facility Work, and Facility Owner waives any applicable statute of limitation to the contrary to the extent permitted by law.

In the event that Facility Owner ultimately is determined to be responsible for the Relocation costs, then Facility Owner shall within 45 days from the date of such determination reimburse the Authority or the Authority's Contractor as directed by the Authority the full amount of all sums advanced that were determined to be the Facility Owner's cost responsibility, plus interest from the date advanced or disbursed by Authority and computed in accordance with Section 1268.350 of the Code of Civil Procedure.

3.6 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Facility Owner of the claim and the Facility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Facility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Facility Owner under this Agreement, the Authority may withhold reimbursement to the Facility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.7 Disputes

The Authority and the Facility Owner agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting Facility Owner's Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the Facility Owner disagrees with a determination or direction made by the Authority, in connection with the Facility Work, the Facility Owner shall provide prompt



written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the Facility Owner may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the Facility Owner. Failure of the Authority to provide a written decision shall be deemed denial of Facility Owner's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority 42 days from the Facility Owner's original written objection, the Facility Owner appeals such decision by written notice to the Authority. In connection with any appeal of the Authority's decision, the Facility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of Facility Owner's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the Facility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the Facility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Facility Owner with respect to the disputed matter as



direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the Utility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the Facility Owner shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.

4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Facility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Facility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Facility Owner, the Facility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Facility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Facility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Facility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Facility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.



The Facility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Facility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Utility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Utility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Facility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Facility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance

The Facility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Facility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Facility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by



Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:
 - 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 - 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Facility Owner and the Authority shall be transmitted directly by the insurer to the Facility Owner and the Authority. The Facility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controlled insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Facility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including



regulatory agencies, local agencies, and public and private Facility Owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the Facility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made, by either the Authority or the Authority's Contractor to be determined by Authority.

Subject to the requirements of the Public Information Act, and to the maximum extent permitted by law, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility by the Facility Owner, the Authority shall be entitled to credits as follows:
 1. The amount of any Betterment to the utility Facility resulting from such relocation.
 2. The salvage value of any materials or parts salvaged and retained by Facility Owner.
 3. If a new utility Facility or portion thereof is constructed to accomplish such relocation, an amount bearing the same proportion to the original cost of the



displaced Facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of FACILITY}}{\text{Normal expected Life}} \times \text{Original Cost}$$

- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Facility Owner.
- C. A credit allowance for age shall not be applied to publicly owned sewers.
- D. Eligible Facility Owner costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. Facility Owner agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at: <http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Facility Owner in the amounts as established for Facility Work performed by the Facility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Facility Owner may be delegated to the Authority's Contractor; in such circumstances, the Facility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor the responsibility to make reimbursement payments to the Facility Owner. Nevertheless, the Task Order shall provide that the Authority and the Authority's Contractor shall be jointly and severally liable for any payments required to be made to the Facility Owner under this Agreement or any Task Order, subject to Paragraph 3.6 of this agreement.

If Facility Work is at the Facility Owner's expense and is performed by the Authority or the Authority's Contractor, the Facility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work plus appropriate amounts for Betterments, salvage and expired service life. At the Authority's written direction given in its sole discretion, the Authority's Contractor may be authorized to accept such payment from the Facility Owner; in such circumstances, the Facility Owner agrees to the Authority's Contractor collection of reimbursement directly from the Facility Owner.

5.3 Invoicing Procedures

Invoicing procedures will be mutually agreed upon by the Authority, the Authority's Contractor and the Facility Owner and set forth in Task Orders.



6 GENERAL CONDITIONS

6.1 Deactivated Facilities

The Facility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Facility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Facility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Facility Owner. In the event of a breach of this Agreement by the Facility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Facility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Facility Owner to use due care in its dealings with others. The Facility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Facility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Facility Owner shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Facility Owner and without any right of the Facility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been



Deactivated. In the event that the Facility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Facility Owner's sole expense.

- F. Except as otherwise provided in this Section 6, the Facility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of Facility Owner. Except as otherwise provided in this Section 6, the Facility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

6.2 Default

In the event that the Facility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by Law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the Facility Owner may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Facility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Facility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Facility Owner, the Authority will notify the Facility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.



Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Authority shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Indemnification

Each Party shall hold harmless, indemnify and defend the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Facility Owner in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Facility Owner. The Facility Owner and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Facility Owner in the defense of the claim or to require the Facility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Utility Owner of a claim shall not release the Facility Owner from any of the requirements of this section.

The Facility Owner's obligation to defend and indemnify shall not be excused because of the Facility Owner's inability to evaluate liability or because the Facility Owner evaluates liability and determines the Facility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Facility Owner. The Facility Owner shall pay all costs and



fees related to this obligation and its enforcement by the Authority. The Authority's delay in notifying the Facility Owner of a claim shall not release the Facility Owner of the above duty to defend.

6.4 Force Majeure

Neither the Facility Owner nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the Facility Owner by the Authority of the Authority's Contractor;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Facility Owner related entity.

The foregoing events shall relieve a Party of liability only if the Party's failure to perform as a result of such event is beyond its control and not due to an act or omission of the Utility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Facility Owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Facility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;



- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Utility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Utility Owner related entity and not listed in the definition of Force Majeure above.

6.5 Facility Owner's Facility and Right-of-way

The Facility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Facility Owner.

Whenever the Facility Owner's affected Facilities are to be relocated from the existing Right-of-way of Facility Owner to a new location that falls outside such existing Right-of-way of Facility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Facility Owner, without charge to the Facility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Facility Owner for those rights previously held by the Facility Owner in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the Facility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the existing Right-of-Way of Facility Owner so vacated.

If the existing Right-of-way of Facility Owner includes fee title, the Authority shall acquire from the Facility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Utility Owner those remaining property rights appropriate for the placement and operation of the Facility Owner's Facilities in the Right-of-way of Facility Owner.

Upon completion of Facility Work by the Authority, the Relocated Facilities shall become the property of the Facility Owner.

6.6 Applicability

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Facility Owner's Facilities to accommodate or permit construction of the HST Project.



Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Facility Owner or Excluded Entities with respect to Facilities pursuant to arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

6.7 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award To Authority's Contractor. Copies of the Authority policies and procedures will be provided to the Facility Owner as soon as practicable after they become available. To the extent otherwise allowable pursuant to Title 23 C.F.R Part 645, Subpart A, the Authority shall pay for any incremental costs incurred by the Utility Owner as a result of the application of Authority's policies and procedures. This Agreement cannot be modified except by an instrument, in writing, signed by the Party to be charged.

6.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Utility Owner shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:



If to Facility Owner:

Facility Owner Name:

Person in Charge:

Address:

Facsimile Number:

If to Authority:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

Facsimile Number:

6.11 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.12 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Facility Owner and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Facility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the Facility Owner's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is



required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."

- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties. None of the rights, obligations or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Agreement to its successor or any entity acquiring all or substantially all of such party's assets.

6.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

6.17 Special Terms and Conditions

The provisions included in Appendix D, "SPECIAL TERMS AND CONDITIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions in connection with this Agreement and subsequent Task



Orders. References in such Special Terms and conditions to "Contractor" shall be deemed to refer to Facility Owner. The Dispute provisions in Section C of the Special Terms and Conditions are superseded by the Dispute process in Section 3.6 of this Agreement.

6.18 Appendices

Appendices A, B, C and D to this Agreement are attached hereto and incorporated by reference herein. This Agreement and the Appendices are intended to be complementary and shall, to the extent reasonably feasible, be interpreted so as to give force and effect to all provisions. In case of conflict between the provisions of this Agreement and those set forth in the Appendices, or between the provisions of the Appendices, the provision with the most stringent standard applicable to the party to be charged shall take precedence.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

FACILITY OWNER:

Signature

Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:

Typed Name

AUTHORITY Legal Counsel



Typed Title

HSR13-06 - EXECUTION VERSION



Appendix 1: Design-Build Procedures

1. PERFORMANCE OF THE FACILITY WORK (PERFORMANCE BY AUTHORITY'S CONTRACTOR)

The Method of performance to be utilized in the design and construction of the Facility Work, as described below ("Method") will be specified in the executed Task Order for the particular Facility Work contemplated.

The Facility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Facility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Facility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work shall be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work.

- A. At such time as the Authority's Contractor has the HST Project plans prepared to a level where the impact on the Facility Owner's Facilities and the nature and extent of the Facility Work can be determined, the Authority's Contractor shall prepare plans for the Facility Work (hereinafter referred to as "Facility Plans", and provide a copy of the Facility Plans to the Facility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Facility Owner's standards.

The Facility Owner shall have fifteen (15) working days from receipt of the Facility Plans to review them and provide comments, including any applicable technical requirements and standards, to the Authority's Contractor and the Authority.

- B. Failure to provide comments within such fifteen (15) working days shall be deemed approval.
- C. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Facility Owner. The final Facility Plans shall incorporate the comments of the Facility Owner Provided such comments are reasonable and do not create inconsistencies with the contract between Authority and the Authority's Contractor.



- A detailed list of final method of inclusion of the Facility Owner's comments shall be provided to the Facility Owner by the Authority's Contractor.
- D. The Facility Owner shall have fifteen (15) working days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Facility Owner's comments are not fully addressed or incorporated, the Facility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
 - E. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Facility Owner. This section shall not apply until paragraph 2.E of Appendix A is satisfied.
 - F. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
 - G. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Facility Owner, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.
 - H. The Facility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Facility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
 - I. Upon completion of the Facility Work, the Facility Owner agrees to accept ownership and maintenance of the constructed Facilities.
 - J. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
 - K. The Authority's Contractor shall provide the Facility Owner with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.



Appendix 2: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Facility Owner. The Facility Owner, however, is not a contractor.

“State” includes Authority.

HSR13-06 - EXECUTION VERSION



SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS

1. ARRA FUNDED PROJECT:

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

3. PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

5. WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the



authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

6. INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

7. WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

8. FALSE CLAIMS ACT:



Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

9. REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- a. The total amount of ARRA funds received by Contractor during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A Description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - v. The Program source
 - vi. An award title descriptive of the purpose of each funding action;
 - vii. The location of the entity receiving the contract;



- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE:

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.



6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



GENERAL TERMS AND CONDITIONS

1. APPROVAL:

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.



6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and



made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS:

Time is of the essence in this Agreement.

13. COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.



- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)



SPECIAL TERMS AND CONDITIONS

1. AMENDMENT (CHANGE IN TERMS)

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

2. TERMINATION

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

3. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions

- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

4. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

5. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

6. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

7. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 10 below.

8. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

9. RETENTION OF RECORD/AUDITS

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

10. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.



- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

11. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

12. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

13. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or



for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.

- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

14. CONFIDENTIALITY OF DATA

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

15. STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

16. DEBARMENT AND SUSPENSION CERTIFICATION

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:



- iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

17. CONFLICT OF INTEREST

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
 - b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
 - c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
 - d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.
- c.



Appendix 3: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

- A. **“Issues Resolution Ladder” (IRL)** – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. **“Stakeholder Implementation Plan” (SIP)** – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.
- C. **“Stakeholder Charter”** – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

2. STAKEHOLDER MEETINGS



The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

DRAFT

HSR13-06 - EXECUTION VERSION



4 Fresno Metropolitan Flood Control District Master Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High Speed Rail Authority

MASTER AGREEMENT

California High Speed Rail Authority

Master Agreement

Fresno Metropolitan Flood Control District

HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT

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California High Speed Rail Authority

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SUMMARY PRELIMINARY DRAINAGE FEE61

MASTER AGREEMENT

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|------------------------------|--|-----------------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

THIS AGREEMENT, entered into this 21st day of June, 2012 (the "Agreement"), by and between the **California High Speed Rail Authority**, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "AUTHORITY", and **Fresno Metropolitan Flood Control District**, a public agency whose principal mailing address is 5469 E Olive Ave, Fresno, CA 93727, hereinafter referred to as the "DISTRICT". AUTHORITY and DISTRICT are hereinafter referred to individually as "PARTY" and collectively as "PARTIES."

RECITALS

WHEREAS, DISTRICT is responsible for implementing the Storm Drainage and Flood Control Master Plan ("Master Plan") applicable to real property within its boundary; and

WHEREAS, DISTRICT owns, operates, or maintains in the County of Fresno, State of California, certain storm drainage facilities ("Storm Drainage Facilities") (said term shall be deemed to include Storm Drainage Facilities as the same may be relocated or adjusted in accordance with this Agreement); and

WHEREAS, DISTRICT operates its Storm Drainage Facilities pursuant to the Fresno Metropolitan Flood Control Act (Sections 73-1 *et seq.* of Appendix to the California Water Code) ; and

WHEREAS, the AUTHORITY is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the Streets and Highways Code ("S&H Code") and Sections 185033 and 185036 of the Public Utilities Code, to construct a high speed rail system for the State of California (the "SYSTEM"), by undertaking a number of "PROJECT(s)", as defined herein; and

WHEREAS, from time to time work on a Project involves constructing, reconstructing, or otherwise changing an existing improvement or installing a new improvement where Storm Drainage Facilities of DISTRICT are located; and

WHEREAS, PROJECT(S) may require the location (vertically and/or horizontally), protection, relocation, installation, or removal of the Storm Drainage Facilities, or some combination thereof, including any submittal review, inspection, certification or other oversight activity, hereinafter referred to as "STORM DRAIN WORK"; and

WHEREAS, PROJECT is a development that produces stormwater runoff, which the AUTHORITY desires perpetually to discharge, or reserve the right to discharge, into Storm Drainage Facilities, and to pay the cost of the DISTRICT's perpetually owning, operating and maintaining those Facilities to accept and dispose of that stormwater runoff; and

WHEREAS, the Non-Conforming Facilities Policy of DISTRICT provides that any person

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constructing any facilities not required by the Master Plan ("Non-Conforming Facilities") shall pay to DISTRICT a fee to own, operate and maintain that Non-Conforming Facility ("NCF Fee"); and

WHEREAS, the AUTHORITY desires to construct Non-Conforming Facilities and to pay the NCF Fee in order to complete the PROJECT; and

WHEREAS, the AUTHORITY and DISTRICT desire to enter into an agreement which establishes the contractual terms and conditions applicable to the STORM DRAIN WORK.

ACCORDINGLY, for and in consideration of the mutual promises set out herein, the adequacy of which are hereby acknowledged, the AUTHORITY and DISTRICT hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

1.1 ACTUAL COST

"ACTUAL COST" means the total actual cost for STORM DRAIN WORK.

1.2 AGREEMENT

"AGREEMENT" is synonymous with this Agreement and refers to the document which establishes the contractual terms and conditions applicable to the STORM DRAIN WORK.

1.3 AUTHORITY

"AUTHORITY" means the California High Speed Rail Authority and its authorized representatives.

1.4 AUTHORITY'S CONTRACTOR

"AUTHORITY'S CONTRACTOR" means the proposer who is awarded the design and construction of any of the PROJECT(s).

1.5 AREA OF COMMON USE

"AREA OF COMMON USE" means that area subject to a Joint Use Agreement or Consent to Common Use Agreement.

1.6 BETTERMENT

"BETTERMENT" means any improvement to Storm Drainage facilities that is requested by DISTRICT and is required to be provided by the AUTHORITY pursuant to any fully executed TASK ORDER that identifies such improvements as a BETTERMENT. As employed herein, for the sake of clarification, BETTERMENT does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the DISTRICT at its own expense, which are in effect as of the date of execution of the Master Agreement. As provided in Appendix "D" hereto, relocation of electrical lines in the City of Fresno is not a BETTERMENT.

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- 1.7 CONSTRUCTION CONTRACT**
"CONSTRUCTION CONTRACT" means the contract between the AUTHORITY and the AUTHORITY'S CONTRACTOR for construction (with or without design) of the PROJECT work that is impacting DISTRICT. All references herein to "the CONSTRUCTION CONTRACT" refer to the CONSTRUCTION CONTRACT(S) for the PROJECT(S) that impact the STORM DRAINAGE FACILITIES, and when used in reference to a particular FACILITY, refer to the CONSTRUCTION CONTRACT that impacts the referenced FACILITY.
- 1.8 COST ESTIMATE**
"COST ESTIMATE" means the detailed breakdown of costs associated with the construction or RELOCATION of a particular STORM DRAINAGE FACILITY.
- 1.9 DEACTIVATED STORM DRAINAGE FACILITIES**
"DEACTIVATED STORM DRAINAGE FACILITIES" means Storm Drainage Facilities that cease to be active as a result of the PROJECT.
- 1.10 DISTRICT**
"DISTRICT" means the Fresno Metropolitan Flood Control District (FMFCD).
- 1.11 DISTRICT'S EASEMENT**
"DISTRICT EASEMENT" means DISTRICT's rights affecting Storm Drainage Facilities.
- 1.12 FACILITY**
"FACILITY" or "FACILITIES" are also used herein to refer to the Storm Drainage Facilities.
- 1.13 HAZARDOUS MATERIALS**
"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.
- 1.14 HIGH SPEED RAIL RIGHT OF WAY**
"HIGH SPEED RAIL RIGHT OF WAY" is synonymous with rail right of way as defined by Federal Rail Authority (FRA).
- 1.15 MASTER PLAN**
"MASTER PLAN" means the DISTRICT'S Storm Drainage and Flood Control Master Plan.
- 1.16 NON-CONFORMING FACILITIES**
"NON-CONFORMING FACILITIES" means facilities constructed by the AUTHORITY as part of the PROJECT to be owned by the District and are not identified on the MASTER PLAN.

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1.17 NON-CONFORMING FACILITIES FEE

"NON-CONFORMING FACILITIES FEE" is synonymous with NCF Fee and refers to a fee incurred to construct a NON-CONFORMING FACILITY.

1.18 NOTICE TO DISTRICT

"NOTICE TO DISTRICT" means a formal written communication.

1.19 PARTIES

"PARTIES" refers to the AUTHORITY and DISTRICT, collectively.

1.20 PRIOR RIGHTS

"PRIOR RIGHTS" means a claimed right of occupancy in a defined property area.

1.21 PROJECT

"PROJECT" means a segment of the System (as determined by AUTHORITY) and the work undertaken or contracted for by AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing rail facilities). All references herein to "the PROJECT" refer to the PROJECT(S) that impact the STORM DRAINAGE FACILITIES, and when used in reference to a particular STORM DRAINAGE FACILITY, refer to the PROJECT that impacts the referenced STORM DRAINAGE FACILITY. RIGHT OF WAY of DISTRICT

"RIGHT OF WAY OF DISTRICT" means a property right or claim of right held by DISTRICT as a prescriptive right, a dedication, or any consent, license, or a right in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right to DISTRICT for the Storm Drainage Facilities in a defined area of real property.

1.22 RELOCATION

"RELOCATION" means removal, relocation, protection or any other rearrangement or modification of DISTRICT's Storm Drainage Facilities as ordered and approved by the AUTHORITY to accommodate any of the AUTHORITY's PROJECTS that may impact DISTRICT'S STORM DRAINAGE FACILITIES. RELOCATION shall include, but not be limited to preparation and submission by the AUTHORITY of RELOCATION plans or drawings sufficiently engineered to allow construction of the ordered RELOCATION, and a detailed estimate by DISTRICT and/or the AUTHORITY of the actual and necessary cost of the ordered RELOCATION for approval by DISTRICT and the AUTHORITY.

1.23 SCHEDULE

"SCHEDULE" means the schedule for the RELOCATION of Storm Drainage Facilities.

1.24 STAKEHOLDERS

"STAKEHOLDERS" means AUTHORITY, AUTHORITY's CONTRACTOR, DISTRICT, and any other third-party entities affected by the PROJECT(s), including

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regulatory agencies, local agencies, and public and private utility entities, collectively.

1.25 STORM DRAINAGE FACILITIES

"STORM DRAINAGE FACILITIES" is synonymous with District Owned Facilities and District's Facilities.

1.26 "S&H CODE"

"S&H CODE" means the California Streets and Highway Code.

1.27 STORM DRAIN WORK

"STORM DRAIN WORK" means activities related to the RELOCATION of a Storm Drain Facilities or construction of new Storm Drain Facilities (or any combination thereof) including the design, engineering, planning and permitting, as well as any necessary certification by or coordination with regulatory agencies and any other miscellaneous work, related to such activities.

1.28 TASK ORDER

"TASK ORDER" means a work order or other agreement executed by the AUTHORITY, the AUTHORITY's CONTRACTOR, and DISTRICT detailing STORM DRAIN WORK specific to particular Storm Drainage Facilities' RELOCATION, replacement or new facilities construction.

1.29 STORM DRAIN PLANS

"STORM DRAIN PLANS" refers to the plans and provisions for STORM DRAIN WORK.

1.30 UNFORESEEN WORK

"UNFORESEEN WORK" means any new and extra work necessary to the satisfactory completion of the PROJECT(s) and not covered by any of the various TASK ORDERS for which there is a bid price or agreed price or by combination of such items.

1.31 WASTED WORK

"Wasted Work" means design, design review, construction work or inspection performed by DISTRICT, upon written direction from the AUTHORITY, for a RELOCATION rendered useless or unnecessary as a result of the AUTHORITY's cancellation and/or changes in the scope of work as agreed to by both PARTIES. This term includes any other design or construction work that is needed to accommodate the PROJECT and is subsequently rendered unnecessary at some later date.

2. WORK TO BE DONE

2.1 STORM DRAIN WORK

STORM DRAIN WORK will remain the property of DISTRICT. STORM DRAIN WORK specific to a particular STORM DRAINAGE FACILITY'S RELOCATION or replacement shall be set forth in a subsequently executed TASK ORDER Agreement.

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2.2 TASK ORDERS

STORM DRAIN WORK shall be set forth in a TASK ORDER executed by the AUTHORITY, the AUTHORITY'S CONTRACTOR, and DISTRICT. The TASK ORDER will set forth among other things, the arrangements between the PARTIES regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the STORM DRAIN WORK for a specific STORM DRAINAGE FACILITY. Format of a TASK ORDER and its content shall be mutually agreed upon by the AUTHORITY, the AUTHORITY'S CONTRACTOR, and DISTRICT, subject to compliance with the requirements of this Agreement. Task Orders may cover Relocation of a single STORM DRAINAGE FACILITY, or of a group of STORM DRAINAGE FACILITIES.

2.3 BETTERMENT WORK AT DISTRICT'S REQUEST

Any work considered a BETTERMENT, as defined in herein, made at DISTRICT's request shall be agreed upon in advance by the PARTIES and set forth in a TASK ORDER, along with costs and allocation of responsibility for such costs to DISTRICT.

2.4 UNFORESEEN WORK

If UNFORESEEN WORK arises during the performance of the STORM DRAIN WORK, it shall be performed under the TASK ORDER that is applicable to that STORM DRAIN WORK and funded by the AUTHORITY'S CONTRACTOR. The AUTHORITY has prepared the 30% plans from record drawings provided by the DISTRICT. The AUTHORITY shall obligate the AUTHORITY'S CONTRACTOR to verify location of existing STORM DRAINAGE FACILITIES.

3. LIABILITY FOR WORK

3.1 AUTHORITY'S EXPENSE

Unless DISTRICT agrees otherwise in writing, STORM DRAIN WORK will be performed at the AUTHORITY'S expense.

3.2 DISTRICT'S EXPENSE

STORM DRAIN WORK will be performed at DISTRICT'S EXPENSE where:

- (A) Work is mutually determined in writing to be a BETTERMENT as defined herein;
- (B) DISTRICT agrees in writing.

3.3 SHARED EXPENSE

The STORM DRAIN WORK will be performed at the shared expense of the AUTHORITY and DISTRICT in circumstances where the AUTHORITY and DISTRICT agree in writing to do so. The proportion of the STORM DRAIN WORK expense to be borne by the AUTHORITY and DISTRICT shall be clearly identified in the TASK ORDER for that STORM DRAIN WORK.

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3.4 AUTHORITY'S CONTRACTOR CLAIMS

In the event the AUTHORITY's CONTRACTOR makes any claim against the AUTHORITY relating to the STORM DRAIN WORK, the AUTHORITY will notify DISTRICT of the claim and DISTRICT will cooperate with the AUTHORITY in analyzing and resolving the claim within a reasonable time.

3.5 DISPUTES

The AUTHORITY and the DISTRICT agree that, as a general principle, the PARTIES shall attempt to resolve any and all disputes arising under this Agreement through a collaborative stakeholder process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the DISTRICT disagrees with a determination or matter made by the AUTHORITY, the DISTRICT shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the PARTIES shall attempt to resolve such dispute through the stakeholder process, which may include further discussion with the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such discussions, the dispute persists, then the DISTRICT shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY, shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the DISTRICT. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 45th day from the date of receipt of such copy, the DISTRICT mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration

In connection with any appeal of the AUTHORITY's decision, the DISTRICT shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the DISTRICT shall conform to any of the AUTHORITY's responses, decisions, orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either PARTY, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint

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one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 *et seq.* and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Fresno County.

If it is determined, in that arbitration, that the AUTHORITY's interpretation of the Agreement, direction to the DISTRICT, or any other action required by the AUTHORITY's decision was an erroneous determination of the rights and obligations of the parties under the Agreement, the DISTRICT'S claim and any award by the panel of arbitrators of the dispute shall be limited to the incremental costs incurred by the DISTRICT with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in the DISTRICT'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

4. PERFORMANCE OF WORK

4.1 GENERAL

All STORM DRAIN WORK (design and construction phases) or portions thereof may be performed by the AUTHORITY or the AUTHORITY's CONTRACTOR as agreed by said PARTIES. Specific responsibilities, the costs therefor and the allocation of responsibility for performing the various portions of STORM DRAIN WORK shall be clearly stated in the TASK ORDER for that work.

4.2 AUTHORITY'S CONTRACTOR OR AGENT PERFORMS WORK

When any STORM DRAIN WORK is to be performed by the AUTHORITY or the AUTHORITY's CONTRACTOR, DISTRICT shall have access to all phases of the STORM DRAIN WORK for the purpose of inspection to ensure that the work is performed in accordance with the TASK ORDER pertaining to that work; however, all questions regarding the work being performed will be directed to the AUTHORITY or its authorized representative for evaluation and final disposition.

Upon the AUTHORITY's NOTICE TO DISTRICT, DISTRICT shall consider the AUTHORITY's CONTRACTOR as acting on behalf of the AUTHORITY on particular matters pertaining to PROJECT that are specifically identified in said notice and shall treat the AUTHORITY's CONTRACTOR's directions on those identified matters as if they were given by the AUTHORITY.

4.3 STAKEHOLDER COLLABORATION

In signing this Agreement, DISTRICT agrees to collaborate with the AUTHORITY, the AUTHORITY's CONTRACTOR, and any other third-party entities affected by the PROJECT(s), including regulatory agencies, local agencies, and public and private utility

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entities, hereinafter referred to as STAKEHOLDERS, to identify collaborative methods for resolving issues that may arise as part of the PROJECT and/or STORM DRAIN WORK in an effort to achieve a quality PROJECT(s) that meets the PROJECT schedule and budget.

STAKEHOLDERS will attend an initial facilitated kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the PROJECT(s). During the initial workshop, STAKEHOLDERS will develop procedures and agreements (including TASK ORDERS) as specified in APPENDIX E, "STAKEHOLDER COLLABORATION," included herein to facilitate the collaborative relationship and aid in identifying and resolving issues as they arise throughout the PROJECT(s).

The AUTHORITY or the AUTHORITY'S CONTRACTOR shall reimburse DISTRICT for its cost of participation in the initial workshop and subsequent meetings.

Except to the extent otherwise required by law, any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by a facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5. PAYMENT FOR WORK

5.1 COST OF STORM DRAIN WORK

Cost of STORM DRAIN WORK includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled STORM DRAINAGE FACILITIES used in any RELOCATION, together with reasonable and usual indirect and overhead charges attributable to that work, and acquisition of any necessary new facility right of way involved in the STORM DRAIN WORK, subject to the following:

1. In any case in which the AUTHORITY is required under the provisions of this AGREEMENT to pay its share of the cost of RELOCATION of any Storm Drainage Facilities, the AUTHORITY shall be entitled to credits for the amount of any BETTERMENTS.
2. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to DISTRICT, or for the salvage value of any materials or parts salvaged, which shall be retained by the AUTHORITY.
3. A credit allowance for age shall not be applied to Storm Drainage Facilities.
4. DISTRICT costs eligible for reimbursement by the AUTHORITY shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. DISTRICT agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

1. <http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

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5.2 INVOICING PROCEDURES

DISTRICT will invoice the AUTHORITY'S CONTRACTOR in accordance with the invoicing procedures of the AUTHORITY'S CONTRACTOR.

6. GENERAL CONDITIONS

6.1 DEACTIVATED STORM DRAINAGE FACILITIES

The AUTHORITY acknowledges its ownership of and responsibility for the DEACTIVATED STORM DRAINAGE FACILITIES.

6.2 DEFAULT

In the event that DISTRICT breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by applicable law, the AUTHORITY may pursue a claim for damages suffered by the AUTHORITY.

In the event that the AUTHORITY breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, DISTRICT may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either PARTY from any obligations it has pursuant to other agreements or TASK ORDERS between the PARTIES, nor from any statutory obligations that either PARTY may have with regard to the subject matter hereof.

The AUTHORITY may unilaterally cancel this Agreement for refusal by DISTRICT to allow access to all public documents, papers, letters, or other material that is made or received by DISTRICT in conjunction with this Agreement.

If the AUTHORITY's PROJECT(s) which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by DISTRICT, the AUTHORITY will notify DISTRICT in writing, and the AUTHORITY reserves the right to terminate this Agreement by Amendment by such written notice.

Notwithstanding any dispute, the PARTIES agree that they will continue their respective performances required hereunder unless and until termination of this Agreement has occurred, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any PARTY under this Agreement or any other agreement or TASK ORDERS executed pursuant hereto, or otherwise available pursuant to applicable law. The PARTIES acknowledge and agree that delays in RELOCATIONS may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the PARTIES shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay PROJECT(s) construction.

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6.3 INDEMNIFICATION

Each PARTY shall defend, hold harmless, and indemnify the other PARTY and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of the indemnifying PARTY or its officers, agents, employees, engineers, contractors or subcontractors in carrying out that PARTY's obligations under this Agreement or under any TASK ORDER executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTIES indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified PARTY.

When either PARTY receives a notice of claim for damages that may have been caused by the other PARTY in the performance of services required under this Agreement, that PARTY receiving the notice will immediately forward the claim to the other PARTY. PARTIES will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, PARTY receiving the notice of claim will determine whether to require the participation of the other PARTY in the defense of the claim or to require the non-notice receiving PARTY to defend the notice-receiving PARTY in such claim as described in this section. A PARTY'S failure to notify the other PARTY of a claim shall not release either PARTY from any of the requirements of this section.

PARTIES' obligation to defend and indemnify shall not be excused because of PARTIES' inability to evaluate liability or because PARTIES evaluate liability and determines it is not liable or determines the other PARTY is solely negligent or has engaged in willful misconduct. Only a final adjudication or judgment finding that a PARTY has been solely negligent or has engaged in willful misconduct shall excuse performance of this provision by either PARTY. Each PARTY shall pay all costs and fees related to this obligation and its enforcement by the other PARTY. A PARTY'S delay in notifying the other PARTY of a claim shall not release that PARTY of the above duty to defend.

6.4 FORCE MAJEURE

Neither DISTRICT nor the AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the PARTY claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and

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C. Resumed performance as soon as practicable.

If any such event of Force Majeure occurs, DISTRICT agrees, if requested by the AUTHORITY, to accelerate its efforts if reasonably feasible to regain lost time, so long as the AUTHORITY agrees to reimburse DISTRICT for the reasonable and actual costs of such accelerated efforts.

6.5 DISTRICT'S STORM DRAIN FACILITY AND RIGHT OF WAY

Other than DEACTIVATED STORM DRAINAGE FACILITIES, any facility owned by DISTRICT shall at all times remain the property of and be properly protected and maintained by DISTRICT provided, however, that during the construction or RELOCATION of STORM DRAINAGE FACILITIES, the AUTHORITY or the AUTHORITY's CONTRACTOR shall properly protect and maintain those STORM DRAINAGE FACILITIES until DISTRICT accepts ownership thereof. .

Whenever DISTRICT's affected STORM DRAINAGE FACILITIES will remain within the AUTHORITY's Right Of Way, the AUTHORITY and DISTRICT shall execute an agreement for common use of the subject area, such agreement shall be in accordance with the AUTHORITY'S policies and procedures for joint or common use of the AUTHORITY's right of way acceptable to both PARTIES..

Whenever DISTRICT's affected STORM DRAINAGE FACILITIES are to be relocated from the existing Right Of Way Of DISTRICT to a new location that falls outside such existing right of way of DISTRICT, the AUTHORITY shall convey or cause to be conveyed to District a new right of way for such relocated STORM DRAINAGE FACILITIES acceptable to DISTRICT. For such RELOCATED FACILITIES, the AUTHORITY shall issue, or cause to be issued, to DISTRICT, without charge to DISTRICT or credit to the AUTHORITY, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and DISTRICT for those rights previously held by DISTRICT in its existing right of way. In discharge of the AUTHORITY's obligations under this Paragraph, in the event that the new location falls within the right of way under the jurisdiction of the AUTHORITY, the AUTHORITY and DISTRICT shall execute an agreement for common use as stated in the above paragraph. In consideration for these replacement rights being issued by the AUTHORITY, DISTRICT shall subsequently vacate and convey to the AUTHORITY, or its nominee, within the AUTHORITY's right of way, all of its corresponding right, title and interest within DISTRICT's existing right of way so vacated.

If the existing RIGHT OF WAY OF DISTRICT includes fee title, the AUTHORITY shall acquire from DISTRICT, for just compensation under State law, those property rights required by the AUTHORITY for its FACILITIES by separate transaction, leaving to DISTRICT those remaining property rights appropriate for the placement and operation of DISTRICT's FACILITIES in the RIGHT OF WAY of DISTRICT.

Upon completion of the STORM DRAIN WORK by the AUTHORITY, the new STORM DRAIN FACILITIES shall become the property of DISTRICT, and DISTRICT shall have

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the same rights in the new location that it had in the old location.

6.6 AGREEMENT FINAL EXPRESSIONS OF THE PARTIES

This Agreement constitutes the complete and final expression of the PARTIES with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the PARTIES understand and agree that the AUTHORITY will have written policies and procedures which shall be applicable as written at the time of Agreement execution. Copies of the AUTHORITY policies and procedures will be provided to DISTRICT as soon as practicable after they become available. The AUTHORITY shall pay for any damages suffered by or costs incurred by DISTRICT for activities that may be required as a result of the AUTHORITY'S policies and procedures. Such activities will be set forth in the TASK ORDER specific to that STORM DRAIN WORK. This Agreement cannot be modified except by an instrument, in writing, signed by each of the PARTIES.

6.7 SEVERABILITY

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.8 GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Fresno County, California.

6.9 NOTICES

All notices under this Agreement must be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail, or U.S. Postal Service Express Mail, with postage prepaid, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this paragraph. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices. Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

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If to DISTRICT:

DISTRICT Name: Fresno Metropolitan Flood Control District
Person in Charge: Jerry Lakeman, District Engineer
Address: 5469 E. Olive Avenue
Fresno, CA 93727

If to AUTHORITY:

AUTHORITY: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz, General Counsel
Address: 770 L Street, Suite 800
Sacramento, CA 95814

6.10 WASTED WORK

The AUTHORITY will pay, in its entirety, that portion of the cost of the STORM DRAIN WORK constituting WASTED WORK.

6.11 HAZARDOUS MATERIAL

Upon discovery of HAZARDOUS MATERIAL in connection with the STORM DRAIN WORK, both DISTRICT and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action. The AUTHORITY'S CONTRACTOR shall immediately reschedule the work in accordance with the AUTHORITY'S reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL.

A. The AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within the AUTHORITY's right of way to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL found as a consequence of that STORM DRAIN WORK.

B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the AUTHORITY's right of way which is required to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL shall be borne by the AUTHORITY.

C. Each PARTY to this Agreement retains the right to pursue recovery of its share of any such HAZARDOUS MATERIAL related costs from third parties in accordance with existing law.

6.12 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the PARTIES.

6.13 THIRD PARTIES

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement unless assigned. This Agreement is not intended to affect the legal liability of PARTIES by imposing any

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standard of care for completing STORM DRAIN WORK different from the standards imposed by law.

The PARTIES agree that the AUTHORITY, without DISTRICT's written approval, shall have the right, in its sole discretion, without additional compensation to the DISTRICT and without being relieved of any liability or obligation of AUTHORITY hereunder, to assign this Agreement (or portions hereof) and any or all associated TASK ORDERS to the AUTHORITY'S CONTRACTOR, and in the event of such assignment, AUTHORITY and AUTHORITY'S CONTRACTOR shall be jointly and severally liable for any payments required to be made to the DISTRICT under this AGREEMENT or any TASK ORDER.

6.14 STATE FUNDS

No state funds or resources are allocated or encumbered as against this Agreement and the AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed TASK ORDER.

6.15 AMERICAN RECOVERY AND REINVESTMENT ACT AND AUTHORITY

The provisions included in Appendix C, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and DISTRICT shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent TASK ORDERS.

MASTER AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first written.

DISTRICT:

BY: Bob Van Wyk DATE: June 26, 2012
Signature

Typed Name: Bob Van Wyk

Typed Title: General Manager-Secretary

| | | | |
|------------------------------------|-------------------|-------|----------------|
| DISTRICT Legal Review | | | |
| BY: | <u>Dan Jensen</u> | DATE: | <u>6-26-12</u> |
| Signature - DISTRICT Legal Counsel | | | |

| | | | |
|-------------------------------------|--|-------|--|
| AUTHORITY Legal Review | | | |
| BY: | | DATE: | |
| Signature - AUTHORITY Legal Counsel | | | |

Approval by the California High Speed Rail Authority

BY: _____ DATE: _____
Signature

o

HSR13-06 - EXECUTION VERSION

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APPENDIX A

TASK ORDER FORM

This task order ("TASK ORDER") entered into this day by and between _____, hereinafter referred to as DISTRICT, _____, herein referred to as the AUTHORITY'S CONTRACTOR, and California High Speed Rail Authority, hereinafter referred to as the AUTHORITY, is as follows:

WHEREAS, the AUTHORITY'S CONTRACTOR AND the AUTHORITY, acting by and through the State of California are parties to a certain Construction Contract with an effective date of _____, 20____, for the design and construction of a portion of a High Speed Railroad Project in the State of California; and,

WHEREAS, DISTRICT and the AUTHORITY are parties to that certain Master Agreement with an effective date of _____, 20____, along with any resulting TASK ORDER which provides for the location (vertically and/or horizontally), protection, relocation, installation, adjustment, or removal of STORM DRAINAGE facilities, or some combination thereof, owned and/or operated by DISTRICT (STORM DRAINAGE FACILITIES); and

WHEREAS, pursuant to the Construction Contract and the Master Agreement, the parties desire to execute a TASK ORDER to add one or more additional STORM DRAINAGE FACILITIES, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. AMENDMENT

This TASK ORDER supplements and amends the Construction Contract and Master Agreement as follows:

- A. Scope of Work: The STORM DRAIN WORK as defined in Section 2.1 (including review, inspect, and approve) is incorporated into the Master Agreement,
- B. Schedule: The AUTHORITY must meet the deadlines for completion of the STORM DRAIN WORK that are provided for in the contract between the AUTHORITY and the AUTHORITY'S CONTRACTOR.
- C. DISTRICT's costs for the STORM DRAIN WORK shall be developed pursuant to Section 5, "PAYMENT OF WORK," of the Master Agreement, and shall be performed in accordance with the procedures set forth in Section 4, "PERFORMANCE OF WORK," and Appendix B, "Design Build Procedures," of the Master Agreement (*check one*): must meet the following deadline for completion of the STORM DRAIN WORK [*check one box*]:

☐ **ACTUAL & REASONABLE COST.** DISTRICT estimates that its total actual cost for the STORM DRAIN WORK (net of any applicable credits for accrued depreciation, salvage and BETTERMENT), referred to herein as the "Actual Cost", will be approximately \$_____ as shown by the Estimates. DISTRICT's Actual Cost

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for the Adjustment work shall be developed in accordance with 23 CFR 645.117, pursuant to either *[check one]*:

- i. ☐ a work order accounting procedure prescribed by the applicable Federal or State regulatory body; or
 - ii. ☐ an established accounting procedure developed by DISTRICT and which DISTRICT uses in its regular operations. Any costs included in the Actual Cost shall be reasonable, and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for DISTRICT at DISTRICT's full expense. The parties agree that ____% of DISTRICT's Actual Cost will be attributed to BETTERMENT.
- ☐ **NO CHARGE.** DISTRICT is responsible for all of its costs for Adjustment of the additional STORM DRAINAGE FACILITIES. Accordingly, DISTRICT is not required to report such costs to the AUTHORITY.
- D. The net Actual Cost, as applicable, for the STORM DRAIN WORK shall be shared between the AUTHORITY and DISTRICT as follows: ____% by the AUTHORITY and ____% by DISTRICT; provided, however, that any portion of the Actual Cost attributable to Betterment shall be borne 100% by DISTRICT. If DISTRICT is entitled to any reimbursement for its costs of the STORM DRAIN WORK, the amounts required to be paid by the AUTHORITY to DISTRICT pursuant to this Agreement shall be full compensation to DISTRICT for all such costs (including without limitation costs of acquiring right of way for the STORM DRAIN WORK). DISTRICT acknowledges it shall not be entitled to compensation or reimbursement for any such costs from the AUTHORITY, the AUTHORITY'S CONTRACTOR, or the State of California.
- E. ☐ *[check if applicable.]* The proposed STORM DRAIN WORK will result in credits for accrued depreciation of those STORM DRAIN FACILITIES, in the amounts indicated on the Estimate.
- F. DISTRICT and the AUTHORITY agree to track separately all costs relating to this TASK ORDER and the STORM DRAIN WORK described herein.
- G. *[Include any proposed amendments.]*

2. GENERAL

- A. All capitalized terms used in this TASK ORDER shall have the meanings assigned to them in the Master Agreement, except as otherwise stated herein.
- B. This TASK ORDER may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

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C. Except as amended hereby, the Master Agreement shall remain in full force and effect, and shall apply fully to the additional STORM DRAINAGE FACILITIES as if they were initially included therein.

D. This TASK ORDER shall become effective upon the later of:

- i. the date of signing by the last party (either DISTRICT or the AUTHORITY) signing this TASK ORDER, and
- ii. the completion of the AUTHORITY's review as indicated by the signature of the AUTHORITY's representative, below.

DISTRICT:

BY: _____ DATE: _____
Signature

Typed Name: _____

Typed Title: _____

DISTRICT'S Legal Review

BY: _____ DATE: _____
Signature – DISTRICT'S Legal Counsel

California High Speed Rail Authority (AUTHORITY)

BY: _____ DATE: _____
Signature

Typed Name: _____

Typed Title: _____

AUTHORITY Legal Review

BY: _____ DATE: _____
Signature - AUTHORITY Legal Counsel

(CONTRACTOR):

California High Speed Rail Authority
MASTER AGREEMENT

BY: _____ **DATE:** _____

Signature

Typed Name: _____

Typed Title: _____

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APPENDIX B

DESIGN BUILD PROCEDURES

1. INITIAL COORDINATION

- a. DISTRICT appoints Jerry Lakeman, District Engineer, jerryvl@fresnofloodcontrol.org, (559) 456-3292, and in his absence Alan Hofmann, Assistant District Engineer/Design, alanh@fresnofloodcontrol.org, (559) 456-3292 as contact persons for DISTRICT who has charge over the STORM DRAIN WORK and will serve as the primary contacts for DISTRICT on all related issues.
- b. DISTRICT has provided the AUTHORITY with a series of As-Built drawings to illustrate the nature and location of DISTRICT'S existing STORM DRAINAGE FACILITIES.
- c. Based on DISTRICT'S verification and comments, the AUTHORITY will prepare Proposed Preliminary Design plans that indicate which STORM DRAINAGE FACILITIES are to be relocated and conceptual arrangements of the relocated STORM DRAINAGE FACILITIES.
- d. DISTRICT will verify the location of existing STORM DRAINAGE FACILITIES and/or correct errors and omissions in the AUTHORITY'S information by furnishing markups to the AUTHORITY of the drawings provided in Paragraph 1.b within 15 working days.
- e. The DISTRICT will review the plans to assist the AUTHORITY in completing correct and complete plans;

These plans will form the basis of subsequent design to be performed by the AUTHORITY, or the AUTHORITY'S CONTRACTOR. The AUTHORITY'S CONTRACTOR shall verify the accuracy of any information provided by the DISTRICT. DISTRICT shall provide the AUTHORITY or the AUTHORITY'S CONTRACTOR access to DISTRICT's plans and records of its depicted STORM DRAINAGE FACILITIES. DISTRICT shall verify, to the best of their ability, the accuracy of their depicted STORM DRAINAGE FACILITIES.

2. PERFORMANCE OF THE STORM DRAIN WORK

The method of performance to be utilized in the design and construction of the STORM DRAIN WORK, as described below, will be specified in the executed TASK ORDER for that STORM DRAIN WORK.

The DISTRICT agrees to (a) the AUTHORITY'S delegation to the AUTHORITY'S CONTRACTOR, the responsibility to reimburse DISTRICT, and (b) the AUTHORITY'S CONTRACTOR's collection of reimbursement directly from DISTRICT's having cost responsibility for BETTERMENTS.

Performance of the STORM DRAIN WORK will be in accord with the following method:

The AUTHORITY'S CONTRACTOR performs all design and construction services for the STORM DRAIN WORK.

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- a. At such time as the AUTHORITY'S CONTRACTOR has STORM DRAIN PLANS prepared to a level where the impact on DISTRICT'S STORM DRAINAGE FACILITIES and the nature and extent of the STORM DRAIN WORK can be determined, the AUTHORITY'S CONTRACTOR will provide a copy of the STORM DRAIN PLANS to DISTRICT. The STORM DRAIN PLANS shall include a preliminary STORM DRAIN WORK design concept which was created by the AUTHORITY'S CONTRACTOR with submittal stages at intermediate, Released for Construction (RFC) and As-Built stages.
- b. DISTRICT shall have fifteen (15) working days from receipt of the STORM DRAIN PLANS intermediate submittal to review them, and provide comments to the AUTHORITY or the AUTHORITY'S CONTRACTOR. DISTRICT shall also provide any applicable technical provisions and standard drawings along with its comments. Failure to provide comments within the time period allowed shall be deemed as an approval.
- c. At such time as the AUTHORITY'S CONTRACTOR has prepared proposed RFC STORM DRAIN PLANS, the AUTHORITY'S CONTRACTOR will provide a copy thereof to DISTRICT. The proposed RFC STORM DRAIN PLANS shall incorporate the comments of DISTRICT provided that the comments are reasonable and do not impair or create inconsistencies with the AUTHORITY'S CONTRACTOR's Agreement with the AUTHORITY.
- d. DISTRICT shall have fifteen (15) working days from receipt of the proposed RFC STORM DRAIN PLANS to review them and provide final comments to the AUTHORITY'S CONTRACTOR. Failure to provide comments within the time period allowed shall be deemed as an approval.
- e. The AUTHORITY'S CONTRACTOR shall make final corrections to the STORM DRAIN PLANS and provide a copy to DISTRICT. If the final STORM DRAIN PLANS do not incorporate all the DISTRICT'S comments, DISTRICT, the AUTHORITY, and the AUTHORITY'S CONTRACTOR shall meet and confer in good faith to resolve the dispute and agree upon the final STORM DRAIN PLANS.
- f. The AUTHORITY'S CONTRACTOR shall perform the construction services for the STORM DRAIN WORK in accordance with the RFC STORM DRAIN PLANS.
- g. Deviations from the corrected RFC STORM DRAIN PLANS initiated by The AUTHORITY, the AUTHORITY'S CONTRACTOR or DISTRICT, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original STORM DRAIN WORK. No deviation from the original STORM DRAIN WORK shall commence without a fully executed Amendment.

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- h. DISTRICT shall be entitled to have a reasonable number of representatives on the site of PROJECT to verify that the STORM DRAIN WORK is being properly performed by the AUTHORITY'S CONTRACTOR. The DISTRICT'S representatives shall at all times comply with all of the AUTHORITY'S CONTRACTOR'S work rules and regulations while on the Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the AUTHORITY'S CONTRACTOR shall have the exclusive right to prohibit the representative from access to the Project Site thereafter.
- i. Upon completion of the STORM DRAIN WORK, DISTRICT agrees to accept ownership and maintenance of the constructed Storm Drainage Facilities and receipt of as-built drawings in accordance with section 2.k.
- j. The process established above shall apply separately to each phase or segment of PROJECT, as established in accordance with the agreement between the AUTHORITY'S CONTRACTOR and the AUTHORITY.
- k. The AUTHORITY shall provide DISTRICT with as-built drawings of the STORM DRAIN WORK. The as-built drawings shall be in the format provided for in the TASK ORDER for that particular STORM DRAIN WORK.

California High Speed Rail Authority

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APPENDIX C

ARRA AND AUTHORITY PROVISIONS

ARRA T&C

CCC-307 CERTIFICATION

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A. ARRA T&C

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SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (34 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS**

- (i.) The name of the project or activity;
- (ii.) A description of the project or activity;
- (iii.) An evaluation of the completion status of the project or activity; and
- (iv.) An estimate of the number of jobs created and /or retained by the project or activity;

d. For any contracts equal to or greater than \$25,000:

- (i.) The name of the entity receiving the contract;
- (ii.) The amount of the contract;
- (iii.) The transaction type;
- (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
- (v.) The Program source;
- (vi.) An award title descriptive of the purpose of each funding action;
- (vii.) The location of the entity receiving the contract;
- (viii.) The primary location of the contract, including the city, state, congressional district and country;
- (ix.) The DUNS number, or name and zip code for the entity headquarters;
- (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;

e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

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MASTER AGREEMENT**B. CCC 307 – CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|---|-------------------------------------|--------------------------------|
| Contractor/Bidder Firm Name (Printed) Fresno Metropolitan Flood Control District | | Federal ID Number 941542794 |
| By (Authorized Signature) <i>Bob Van Wyk</i> | | |
| Printed Name and Title of Person Signing Bob Van Wyk, General Manager-Secretary | | |
| Date Executed <i>June 26, 2012</i> | Executed in the County of Fresno | |

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a

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Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.
7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

California High Speed Rail Authority

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NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

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C. GTC 610

DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. DISTRICT may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the DISTRICT, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: DISTRICT agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. DISTRICT agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. DISTRICT agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, DISTRICT agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: DISTRICT agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by DISTRICT in the performance of this Agreement.
6. DISPUTES: DISTRICT shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the DISTRICT fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the DISTRICT under this Agreement and the balance, if any, shall be paid to the DISTRICT upon demand.
8. INDEPENDENT CONTRACTOR: DISTRICT, and the agents and employees of DISTRICT, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The DISTRICT shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, DISTRICT and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and

MASTER AGREEMENT

AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. DISTRICT, its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. DISTRICT, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. DISTRICT, its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

DISTRICT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid DISTRICT, as provided herein, shall be in compensation for all of DISTRICT's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The DISTRICT by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the DISTRICT shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the

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cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the DISTRICT acknowledges in accordance with Public Contract Code 7110, that:

a. The DISTRICT recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The DISTRICT, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the DISTRICT shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then DISTRICT must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then DISTRICT must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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APPENDIX D

SPECIAL CONDITIONS

1. PROJECT is a development that produces stormwater runoff, which the AUTHORITY desires perpetually to discharge, or reserve the right to discharge, into Storm Drainage Facilities, and the AUTHORITY acknowledges its obligation to pay the cost of the DISTRICT's perpetually owning, operating and maintaining those Facilities to accept and dispose of that stormwater runoff; and
2. The Non-Conforming Facilities Policy of DISTRICT provides that any person constructing any facilities not identified on the Master Plan ("NON CONFORMING FACILITIES") shall pay to DISTRICT a fee to own, operate and maintain that NON CONFORMING FACILITIES ("NCF Fee"); and
3. The AUTHORITY desires to construct Non-Conforming Facilities in order to complete the PROJECT.
4. DISTRICT operates its Storm Drainage Facilities pursuant to the Fresno Metropolitan Flood Control Act (Sections 73-1 *et seq.* of Appendix to the California Water Code.
5. The AUTHORITY'S CONTRACTOR shall (i) execute and comply with and (ii) pay or cause to be paid to DISTRICT drainage fees in accordance with the Fresno Metropolitan Flood Control District Drainage Facility Project Agreement attached hereto as Appendix F and the NCF Fee that is calculated in accordance with the DISTRICT'S NON CONFORMING FACILITIES Policy. Those drainage fees are intended to compensate DISTRICT for the cost of its perpetually accepting the stormwater runoff from the PROJECT into Storm Drainage Facilities
6. The AUTHORITY'S CONTRACTOR shall use Blair Church & Flynn, Provost & Pritchard or other local engineering firms approved by the District to complete the Storm Drainage Work Design.
7. To the extent AUTHORITY'S CONTRACTOR needs import material for the PROJECT, the DISTRICT has 1,800,000 cubic yards of material available for export from within urban stormwater basin properties currently under its ownership, dependent on seasonal conditions. A diagram of the location and approximate volume is attached hereto as Appendix G. The DISTRICT has an on-going program to allow contractors to export material from these sites subject to obtaining from the DISTRICT a Borrow Material Permit containing grading and excavation conditions and requiring payment of a fee of 60¢ per cubic yard. Use of DISTRICT's import material shall mitigate the volume of stormwater storage capacity required to store PROJECT runoff. That mitigation shall offset storage capacity as shown on the table below. The AUTHORITY'S CONTRACTOR is responsible to verify that the material is suitable for use. This provision provides no BETTERMENT to DISTRICT.
8. In the event the AUTHORITY'S CONTRACTOR installs or replaces electrical power lines (i) supplying electrical power to DISTRICT's STORM DRAINAGE FACILITIES or (ii) crossing or located on such STORM DRAINAGE FACILITIES, the AUTHORITY'S CONTRACTOR shall install new or replacement lines only underground consistent with the requirements applicable to utility companies in underground utility Districts per Chapter 13, Article 6 of the City of Fresno Municipal Code. This provision provides not BETTERMENT to District.

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APPENDIX E STAKEHOLDER COLLABORATION

In order to accomplish PROJECT(s) through the most effective means available, a collaborative relationship will be formed as agreed to by PARTIES in Section 4.5 "STAKEHOLDER COLLABORATION." As part of this partnership, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration and cooperation is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the STAKEHOLDERS to resolve issues that may arise during the performance of STORM DRAIN WORK.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the PROJECT(s), the STAKEHOLDERS agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the stakeholder relationship and aid in identifying and resolving issues as they may arise throughout the PROJECT:

- A. *"Issues Resolution Ladder" (IRL)* – a hierarchy of those individuals within the PROJECT including the STAKEHOLDERS and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. *"Stakeholder Implementation Plan" (SIP)* – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the STORM DRAIN WORK to be addressed by the STAKEHOLDERS
- C. *"Stakeholder Charter"* – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all STAKEHOLDERS

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve PROJECT issues.

California High Speed Rail Authority

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APPENDIX F

**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT DRAINAGE
FACILITY PROJECT AGREEMENT (DRAINAGE FEE AND REIMBURSEMENT)**

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AGREEMENT No. _____

MASTER AGREEMENT

**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
DRAINAGE FACILITY PROJECT AGREEMENT
(Drainage Fee and Reimbursement)**

WHEREAS, California High Speed Rail Authority ("Authority") wishes _____ (Authority's Contractor) [NOTE: If this is to be executed with Master Agreement, Contractor will not yet be identified.] to construct the project identified as HSR Construction Package #1 (the "Project") on real property in the City or County of Fresno as depicted on Exhibit No. 1 attached hereto ("Authority's Property"); and

WHEREAS, the Fresno Metropolitan Flood Control District ("District") is responsible for implementing the Storm Drainage and Flood Control Master Plan ("Master Plan") adopted for the Fresno County Stream Group area; and

WHEREAS, District, Authority, and Authority's Contractor are hereinafter referred to individually as "Party" and collectively as "Parties"; and

WHEREAS, the Drainage Fee Ordinance of District ("District Ordinance") requires Authority to cause Authority's Contractor, prior to the approval by the District of the Project, to pay to District an urban drainage fee calculated by District with respect to the Project ("Drainage Fee"); and

WHEREAS, the Authority will carry out Storm Drain Work, as that term is defined in the Master Agreement entered into between Authority and District with regard to the Project, and Authority may construct certain storm drainage facilities identified in the Master Plan and District intends to reimburse Authority for some or all of the costs of constructing those facilities, which shall not include any replacement or relocation of District facilities that existed prior to the date of that Master Agreement, but such reimbursement shall not exceed the amount of the Drainage Fee; and

WHEREAS, as of the date hereof, District can calculate only the preliminary amount of that Drainage Fee and Authority and District can only estimate the cost of Authority's constructing those storm drainage facilities; and

WHEREAS, in order for Authority to commence construction of the Project, District and Authority intend to use the preliminary Drainage Fee amount and estimated costs with the intention and obligation of each to carry out their respective duties set forth herein using the final amounts of the Drainage Fee and construction costs when the same are known after construction of those facilities and final approval of an entitlement for the Project by the District; and

WHEREAS, Authority, Authority's Contractor, and District desire to set forth in this written Agreement their respective rights and obligations.

MASTER AGREEMENT

THEREFORE, it is mutually agreed as follows:

- | | <u>Preliminary
Amount</u> | <u>Final
Amount</u> |
|--|--|-------------------------|
| 1. Within forty-five (45) days after the execution hereof, Authority shall cause Authority's Contractor to pay to District its standard Drainage Fee per Appendix H calculated in accordance with Paragraph No. 8(A) below in the amount of: | \$2,730,000 | \$ _____ |
| 2. Authority may construct in accordance with all District requirements, Master Plan facilities identified on Exhibit No. 2 attached hereto (as it may be amended by District and Authority) and specifically referred to hereinafter as "Reimbursable Facilities" at a total cost of: | \$ _____ | \$ _____ |
| 3. Subject to subparagraph 9 below, District shall pay to Authority construction costs incurred by Authority pursuant to Paragraph No. 2 hereof in the following amount: | \$ _____ | \$ _____ |
| 4. Within forty-five (45) days of District's acceptance of the Reimbursable Facilities, District shall pay to Authority its construction costs for Reimbursable Facilities in the following amount: | \$ _____ | \$ _____ |
| 5. Final Date of Agreement: | _____ | |
| | (Date to be determined by the District pursuant to Paragraph No. 6 hereof) | |
| 6. Within ninety (90) days of acceptance by District of those Reimbursable Facilities for which reimbursement is claimed, Authority shall submit to District in electronic or hard copy format the permanent reproducible as-built or record plans of the Reimbursable Facilities, along with the project accounting reflecting final costs paid for the items | | |

MASTER AGREEMENT

eligible for reimbursement. District shall not pay reimbursements unless and until Authority completes the submittals required by this Paragraph No. 6. District shall establish and insert into Paragraph No. 5 above, the Final Date of this Agreement, using the date of receipt of the last submittal, only after District reviews and approves all Authority's submittals required hereby.

7. District shall determine the preliminary amount of the Drainage Fee stated in Paragraph No. 1 above and the preliminary construction cost specified in Paragraph No. 2 above based on the most recent map or plans of the Project and of the Master Plan available to District at the time of preparation of this Agreement.
8. (a) District shall calculate the final amount of the Drainage Fee stated in Paragraph No. 1 above based on the final approved plan or map of the Project. Taking into account all areas of improvement (alteration of the surface of the land) included in the Project.

(b) Upon acceptance by District of the completely constructed Reimbursable Facilities, District shall determine the final construction cost thereof and adjust the preliminary amount identified in Paragraph No. 2 above to reflect that final cost amount, which shall reflect Authority's actual cash expenditure as determined from unit prices established by such bidding procedures as may be required by District.

(c) Upon completion of such Reimbursable Facilities constructed by the Authority pursuant to this Agreement, Authority shall and does hereby offer them to District at the cost determined by District pursuant to subparagraph 8(b) above.
9. Even if the final construction cost determined pursuant to subparagraph 8(b) above exceeds the final amount of the Drainage Fee determined pursuant to subparagraph 8(a) above, District shall not pay to Authority any amount of construction cost in excess of the Drainage Fee. Reimbursable Facilities excludes all Storm Drain Work that is constructed as a replacement or relocation of facilities existing prior to the Project.
10. The preliminary amount of the Drainage Fee set forth in Paragraph No. 1 above has been computed using drainage fee rates in effect at the time of preparation of this Agreement. Should new rates become effective prior to the execution hereof, such new rates shall apply and all related amounts specified herein shall be adjusted accordingly.
11. The obligations set forth hereunder are both personal to Authority and constitute covenants running with the land of Authority; to wit, Authority's Property, such that they are binding on Authority's successors-in-interest in the Authority's Property and remain binding upon Authority after its sale of the Authority's Property or any portion thereof,

MASTER AGREEMENT

unless upon any such transfer District, in its sole and absolute discretion, consents in writing to an agreement provided by Authority and signed by its successor-in-interest expressly assuming all or a portion of Authority's obligations hereunder. Authority shall and hereby agrees to give notice of this Agreement to any buyer of or successor-in-interest in the Authority's Property.

12. In installing Reimbursable Facilities pursuant to this Agreement, Authority shall not be deemed to be a contractor or other agent of the District, but shall be deemed to be constructing the Project for its own benefit.
13. The contract amounts for construction of Reimbursable Facilities and the amounts of any change orders to such contract shall require written approval of the District, in its sole and absolute discretion, prior to Authority's execution of such construction contracts and change orders. Such amounts as approved by the District shall constitute the basis for calculating the amount of the reimbursement for such construction provided pursuant to this Agreement.
14. All notices under this Agreement must be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail, or U.S. Postal Service Express Mail, with postage prepaid, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this paragraph. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices. Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

MASTER AGREEMENT

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz
Address: 770 L Street, Suite 800
Sacramento, CA 95814

Authority's Contractor:
Name:
Address:

District: Bob Van Wyk
General Manager-Secretary
Fresno Metropolitan Flood
Control District
5469 East Olive Avenue
Fresno, CA 93727

Copy to: Douglas B. Jensen
Legal Counsel
Baker, Manock & Jensen, P.C.
Fig Garden Financial Center
5260 North Palm Avenue, Suite 421
Fresno, CA 93704

Authority shall promptly notify District of any change of address.

15. All Exhibits referred to herein and attached hereto are hereby incorporated herein as though set forth in full.
16. This Agreement may be amended only by a written document signed by all Parties hereto.
17. In the event Authority constructs facilities that are not identified on the Master Plan ("Non-Conforming Facilities"), Authority shall cause the Authority's Contractor to pay to District pursuant to Section 2.303 of the District Ordinance, Non-Conforming Facilities fees in effect on the date District accepts the Non-Conforming Facilities. The present schedule of such fees is attached hereto as Exhibit No. 3.

Executed this _____ day of _____ 20____ * Final document formatted so OParagraph 17 and all signatures are contained on the page.

MASTER AGREEMENT

“District”

Fresno Metropolitan Flood
Control District, a
California public corporation

By: _____

Bob Van Wyk
General Manager-Secretary
5469 East Olive Avenue
Fresno, CA 93727

“Authority”

Authorized Official(1)

Name and Title

Authorized Official(2)

Name and Title

Authority’s Contractor

Authorized Official (1)

Name and Title

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California High Speed Rail Authority
MASTER AGREEMENT

Authority's Contractor

Authorized Official (2)

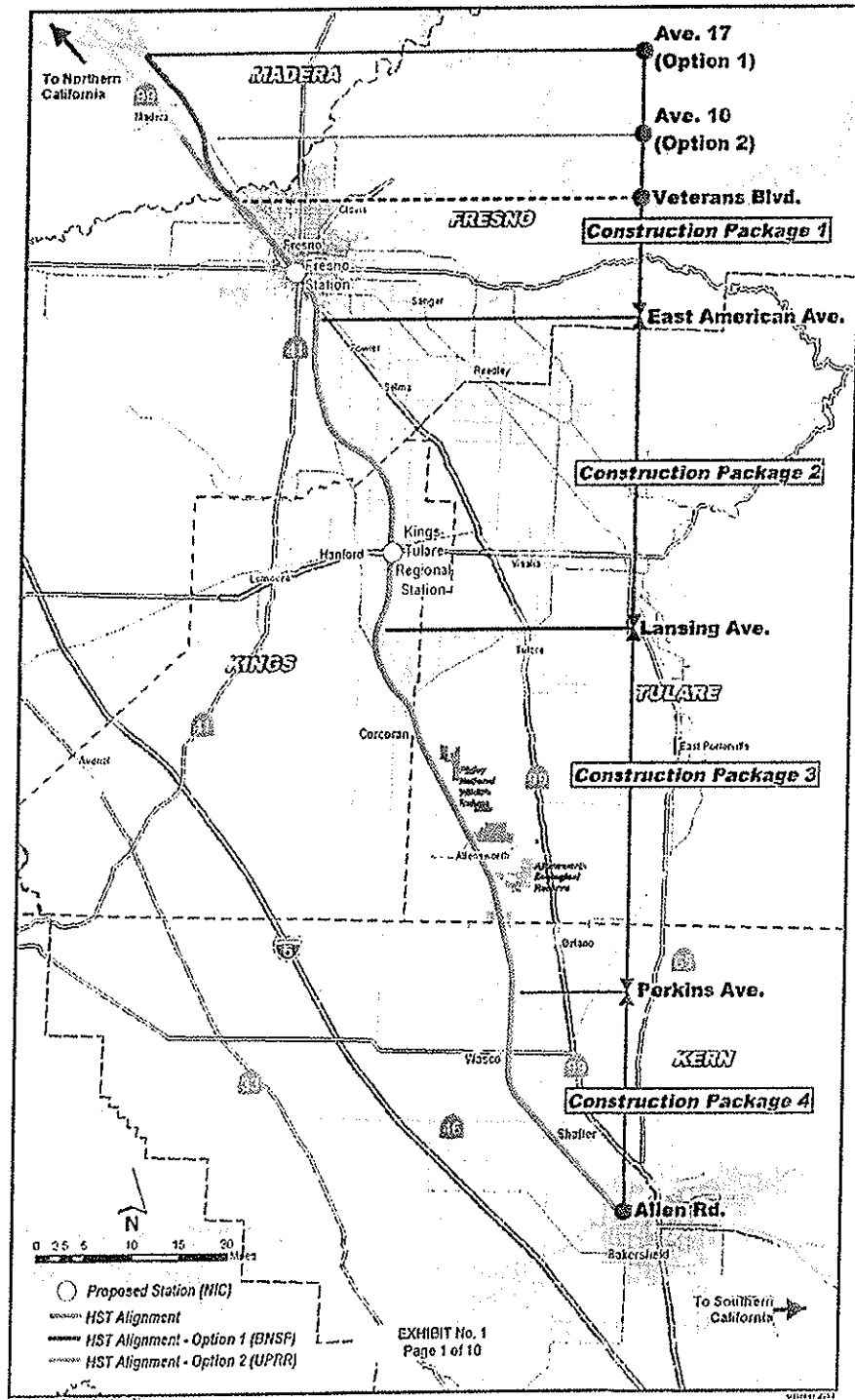
Name and Title

| | |
|-------------------------------|-----|
| Engineering Department Review | |
| Approved by: | |
| _____ or _____ | |
| GEL | AEH |

**Exhibit No. 1 to
Drainage Facility Project Agreement**

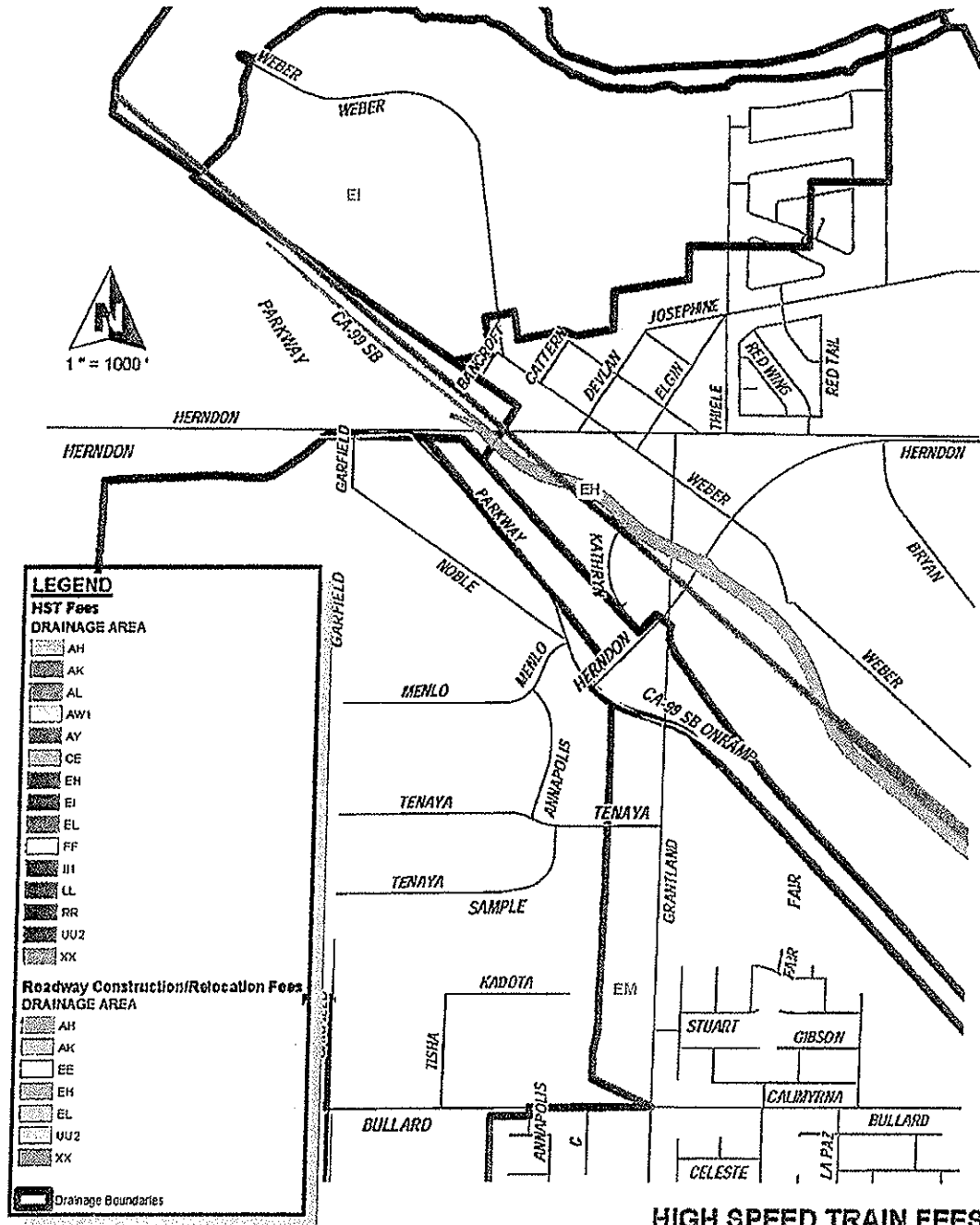
HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT
[Depiction of Authority's Property]



HSR13-06 - EXECUTION VERSION

California High Speed Rail Authority
MASTER AGREEMENT



**HIGH SPEED TRAIN FEES
 BY DRAINAGE AREA**

EXHIBIT No. 1
 Page 2 of 10



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: rich
 Date: 10/10/2011
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MASTER AGREEMENT

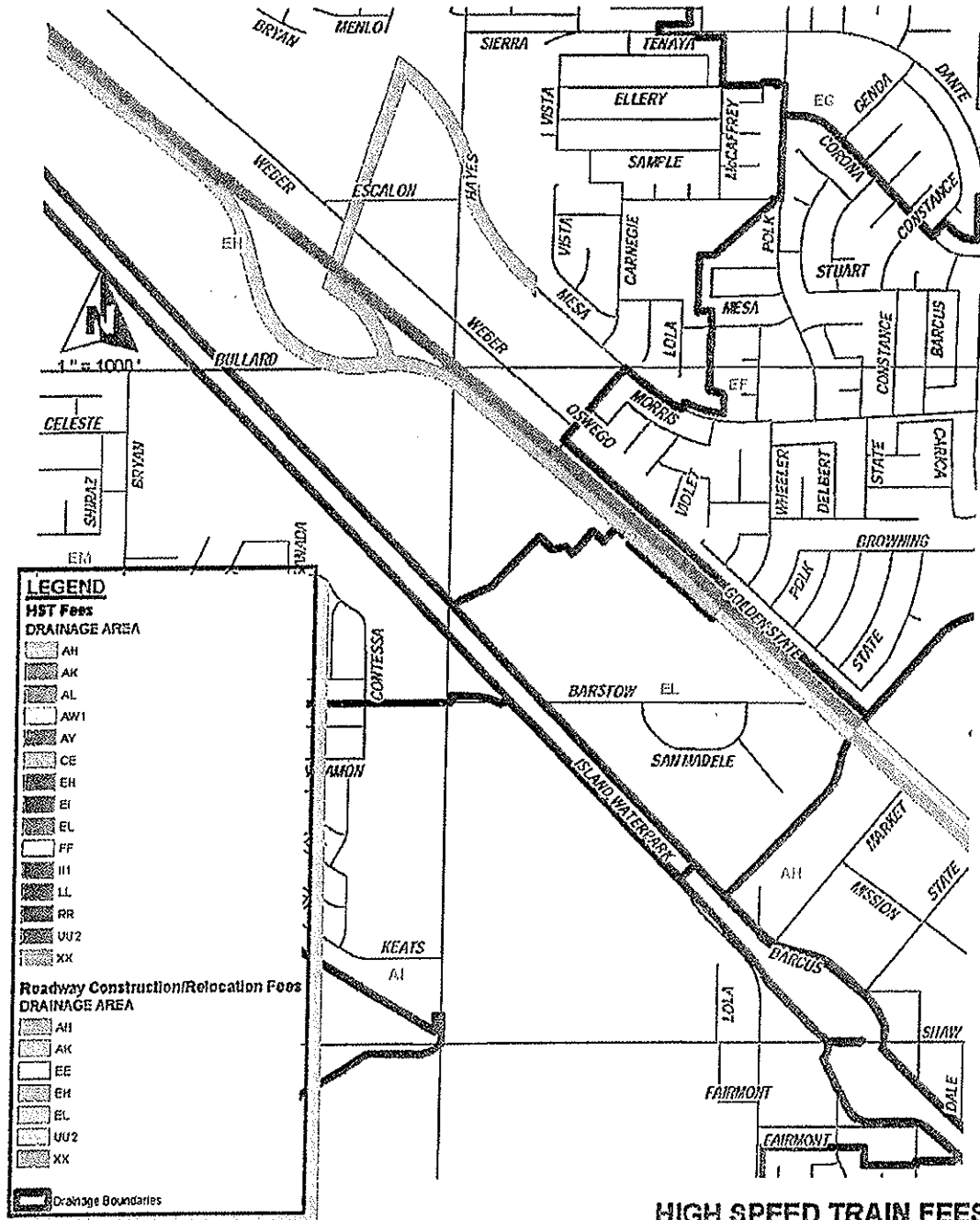


EXHIBIT No. 1
Page 3 of 10

HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: rich
Date: 10/10/2011
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HSR13-06 - EXECUTION VERSION

California High Speed Rail Authority
MASTER AGREEMENT

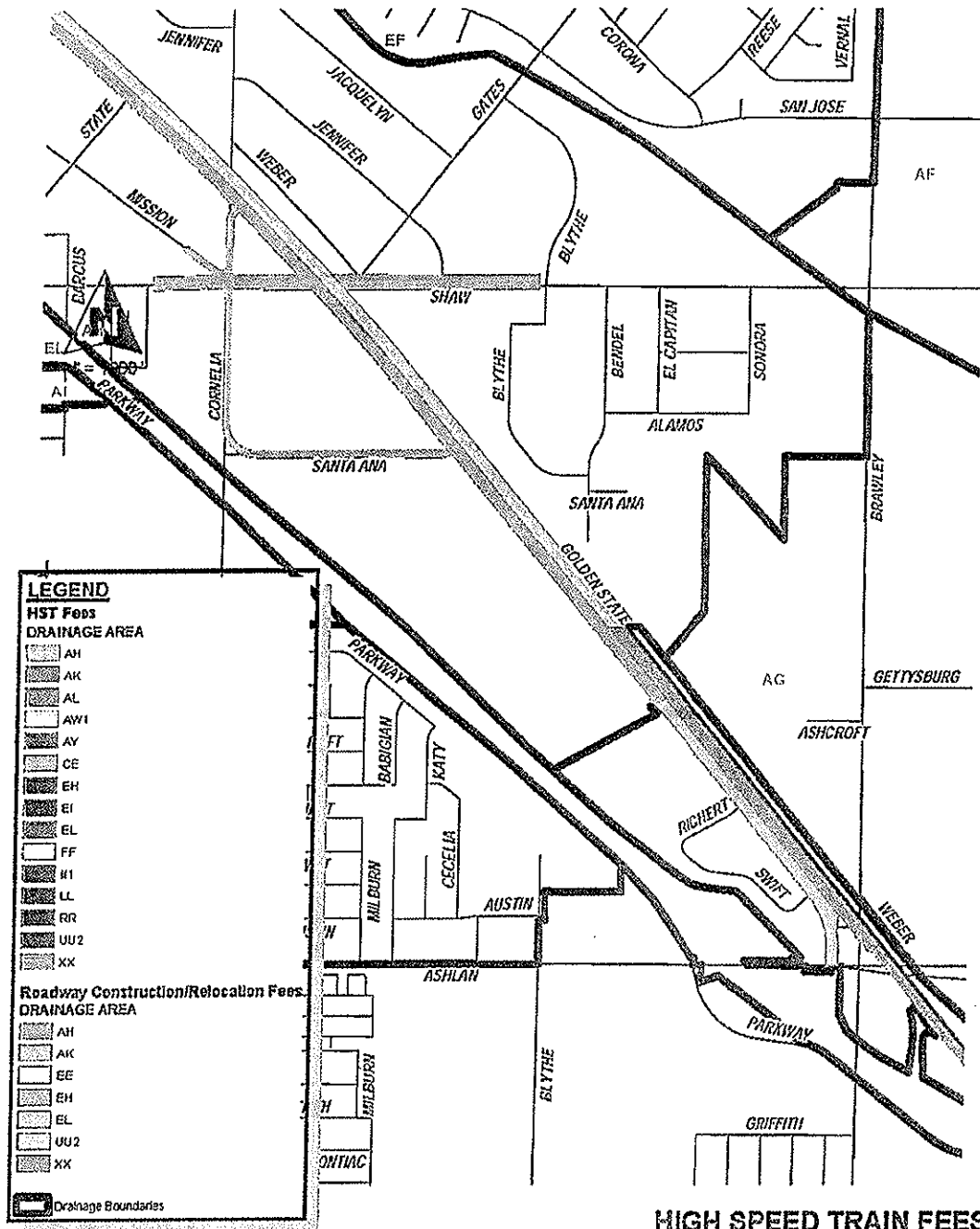


EXHIBIT No. 1
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**HIGH SPEED TRAIN FEES
 BY DRAINAGE AREA**



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: rich
 Date: 10/10/2011
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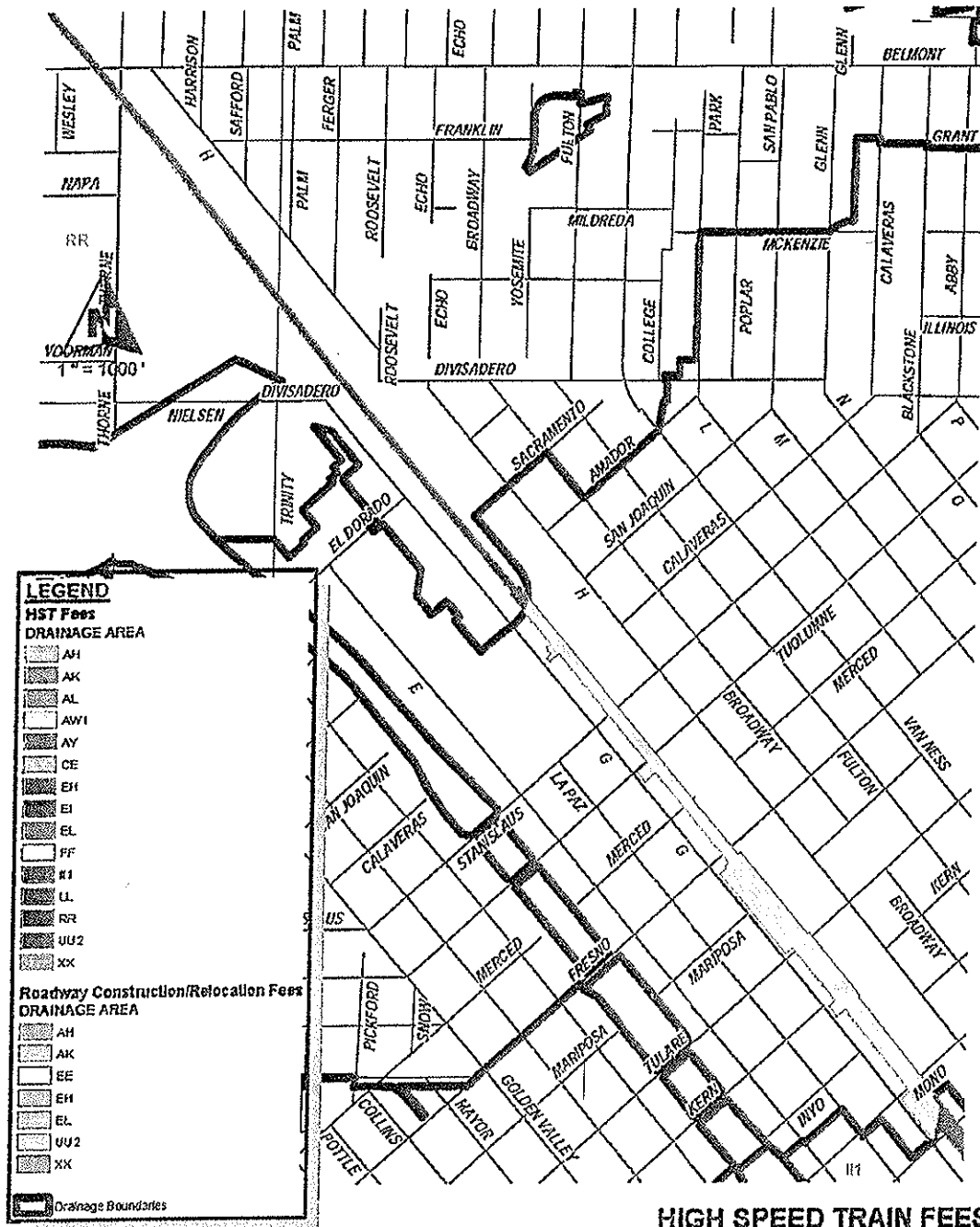


EXHIBIT No. 1
Page 7 of 10

HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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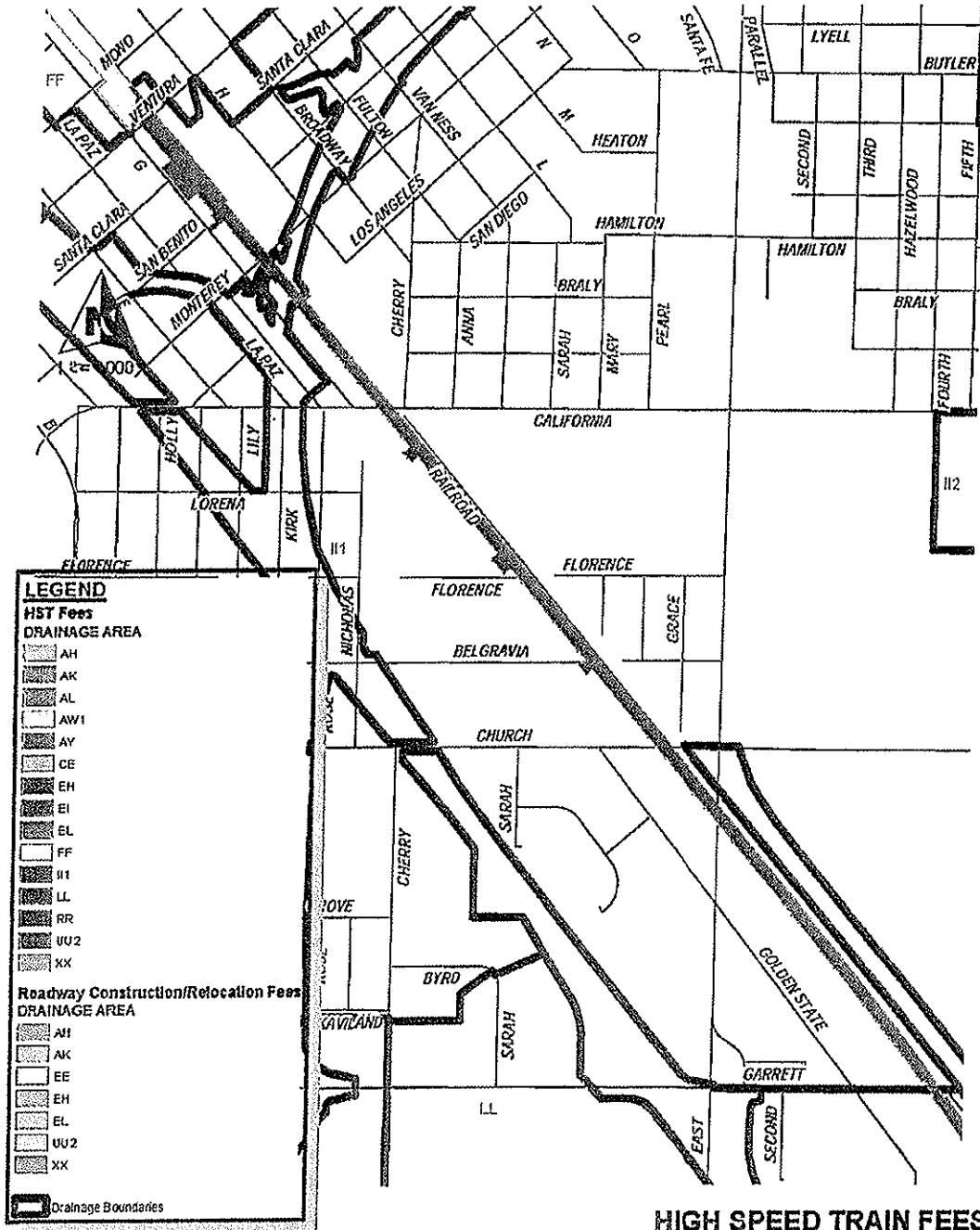


EXHIBIT No. 1
Page 8 of 10

HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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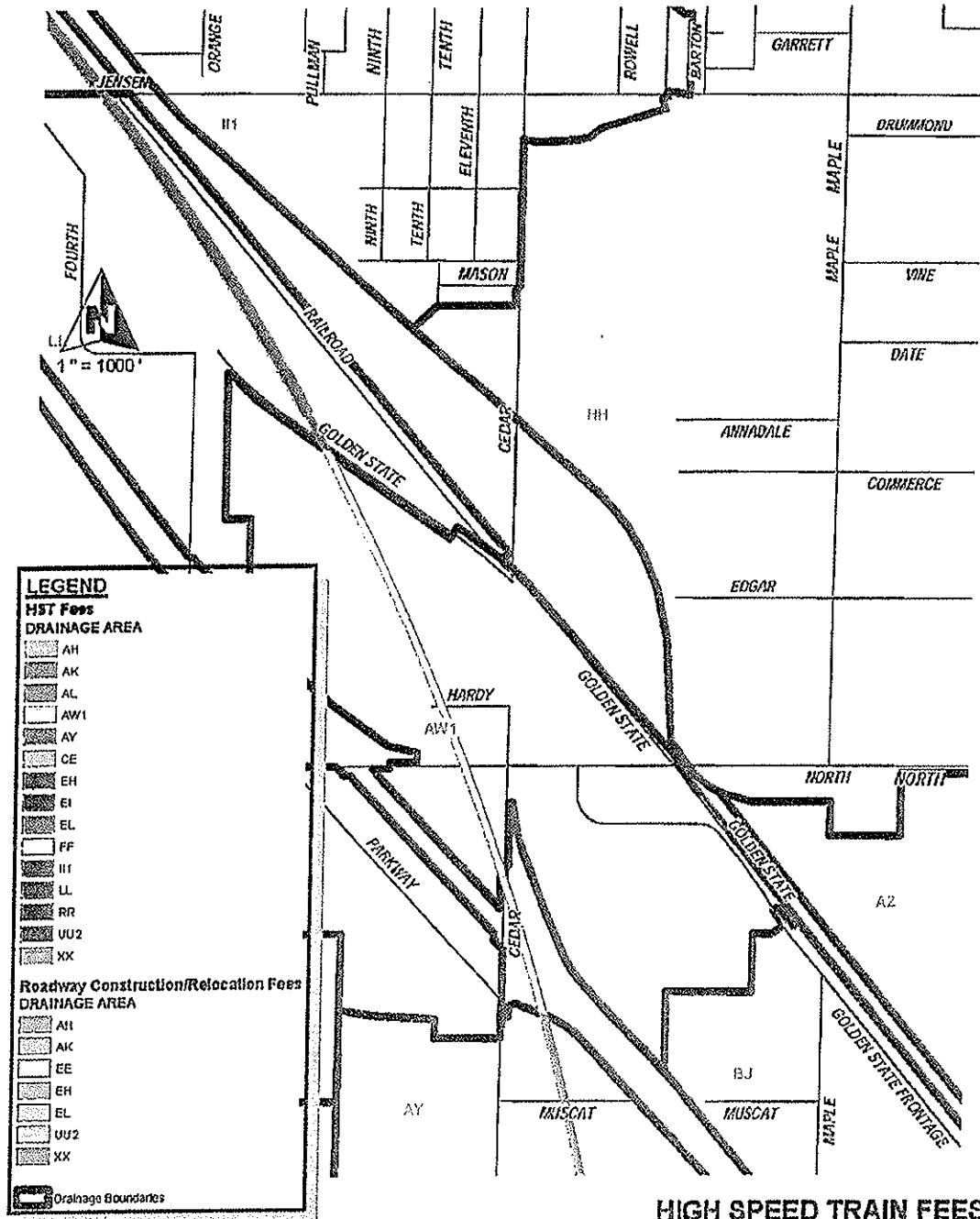


EXHIBIT No. 1
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HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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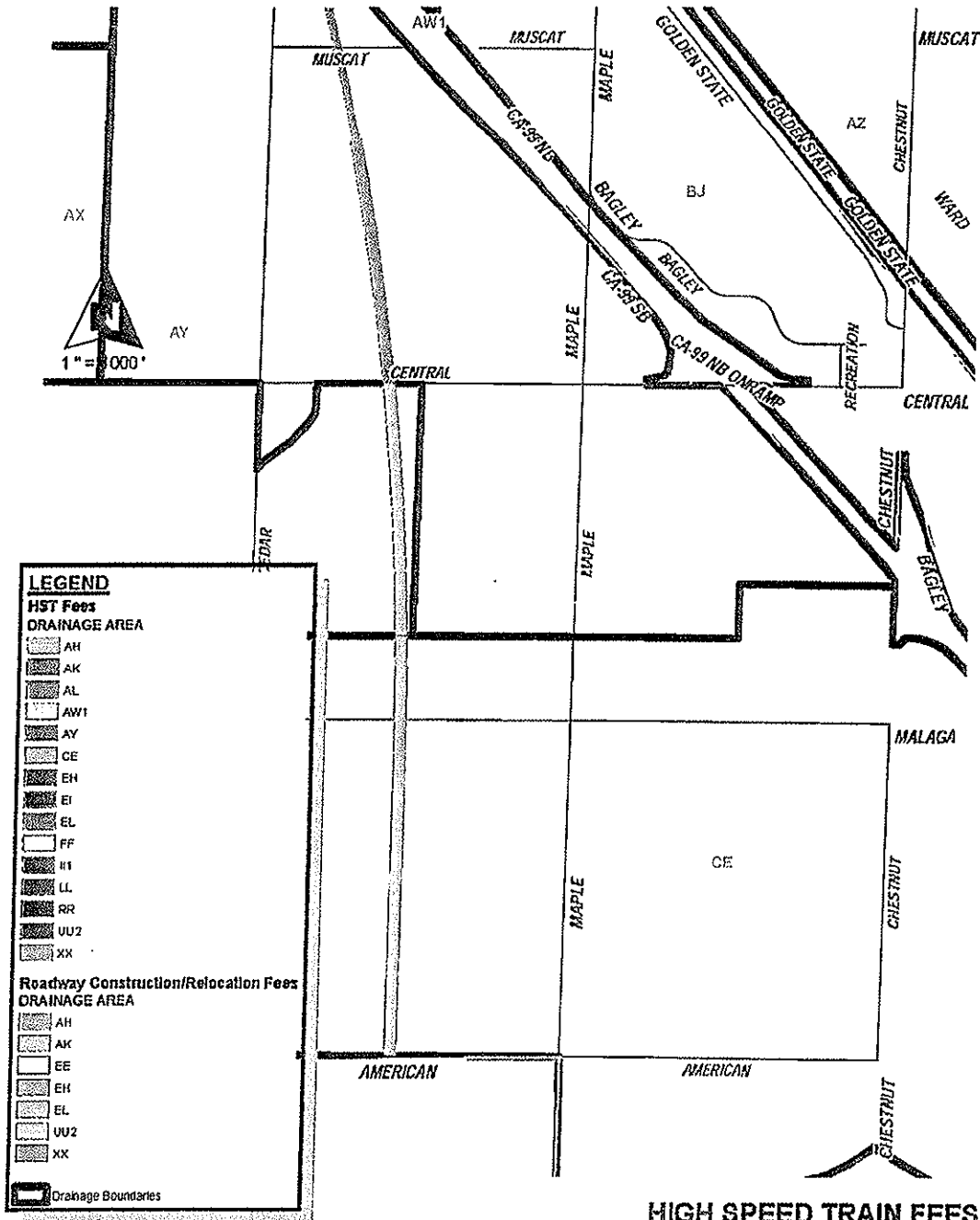


EXHIBIT No. 1
Page 10 of 10

HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: rich
Date: 10/10/2011
Path: K:\Master Planning & Special Projects\Misc. Special Studies\2011-200_HSR Train Project\HSR\FEES.mxd

HSR13-06 - EXECUTION VERSION

California High Speed Rail Authority
MASTER AGREEMENT

| | |
|---|----------|
| Project Review-Legal Description Approval | |
| Approved by: | |
| | or |
| DEBBIE | ENGINEER |
| DATE _____ | |

HSR13-06 - EXECUTION VERSION

California High Speed Rail Authority
MASTER AGREEMENT

Exhibit No. 2 to
Drainage Facility Project Agreement

[Diagram and Estimate of Reimbursable Facilities]

HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT

Exhibit No. 3 to
Drainage Facility Project Agreement

[Non-Conforming Facilities Fees]

**ORDINANCE CODE: ORDINANCE 2004-1
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**

CHAPTER 2

**MASTER SCHEDULE OF SERVICE CHARGES
AMENDING ORDINANCE 97-2, CHAPTER 2**

2.100 Purposes.

2.101 The Board of Directors finds and declares that the programs and activities of the District frequently involve the provision of direct services to specific individual beneficiaries. The Board of Directors determines that such programs and activities produce direct and indirect costs to the District and that it is appropriate for such costs to be borne by the beneficiaries of such programs and activities.

1.102 It is the purpose of this Chapter to establish a specific schedule of service charges to be collected by the District from beneficiaries of the identified District services, further providing a means of regularly reviewing and adjusting such service charges to fully reflect current actual District costs.

2.200 Definitions.

2.204 "Non-Conforming Facilities" means facilities not identified in and not required by the District's adopted Storm Drainage Master Plan, also referred to as "Non-Master Plan Facilities".

2.303 Non-Conforming Facilities Services.

- a. There exists a significant and continuing demand by non-District parties to construct non-Storm Drainage Master Plan Facilities in-lieu of providing surface grading or street patterns as otherwise required. The Board of Directors has determined that such non-Storm Drainage Master Plan Facilities may be accepted by the District for perpetual operation and maintenance subject to the provisions of this Section.
- b. Acceptance by the District of non-Storm Drainage Master Plan Facilities requires the District to (1) provide an engineering review of the hydraulic and construction design plans and specifications, (2) perform on-site construction inspection, (3) accept, operate and maintain in

MASTER AGREEMENT

perpetuity the completed facilities; and (4) administer detailed engineering and contractual records, which activities result in direct and indirect costs to the District.

- c. Pursuant to this Chapter the District may accept from a non-District party, at its sole discretion, non-Storm Drainage Master Plan facilities for perpetual operation and maintenance by the District, subject to (1) execution of a Non-Conforming Facilities Agreement (2) compliance with all conditions, plans and specifications established by the District for such construction; and (3) payment to the District of the Non-Conforming Facilities Service Charge as computed using the rates set forth in Section 2.400 of this Chapter.
- d. Failure of non-District parties constructing non-Storm Drainage Master Plan facilities pursuant to this Section to comply with the provision hereof shall result in the imposition of penalties which may include but are not limited to (1) termination of any current Non-Conforming Facilities Agreement (2) non-acceptance by the District of the facilities being constructed (3) monetary fines and penalties as may be imposed by the District; (4) such other remedies and penalties which may be available under law.

2.402 Service Charges.

Non-Conforming Facilities Service Charges:

| | | |
|-----|---|----------|
| (1) | Engineering Charge, Basic Hydrology | \$550.00 |
| (2) | Engineering Charge, Each inlet in excess of one | \$ 30.00 |
| (3) | Inspection Charge | \$180.00 |
| (4) | Maintenance Charge per Lineal Foot | \$ 6.50 |

2.500 Adjustment and Amendment of Master Schedule of Service Charges.

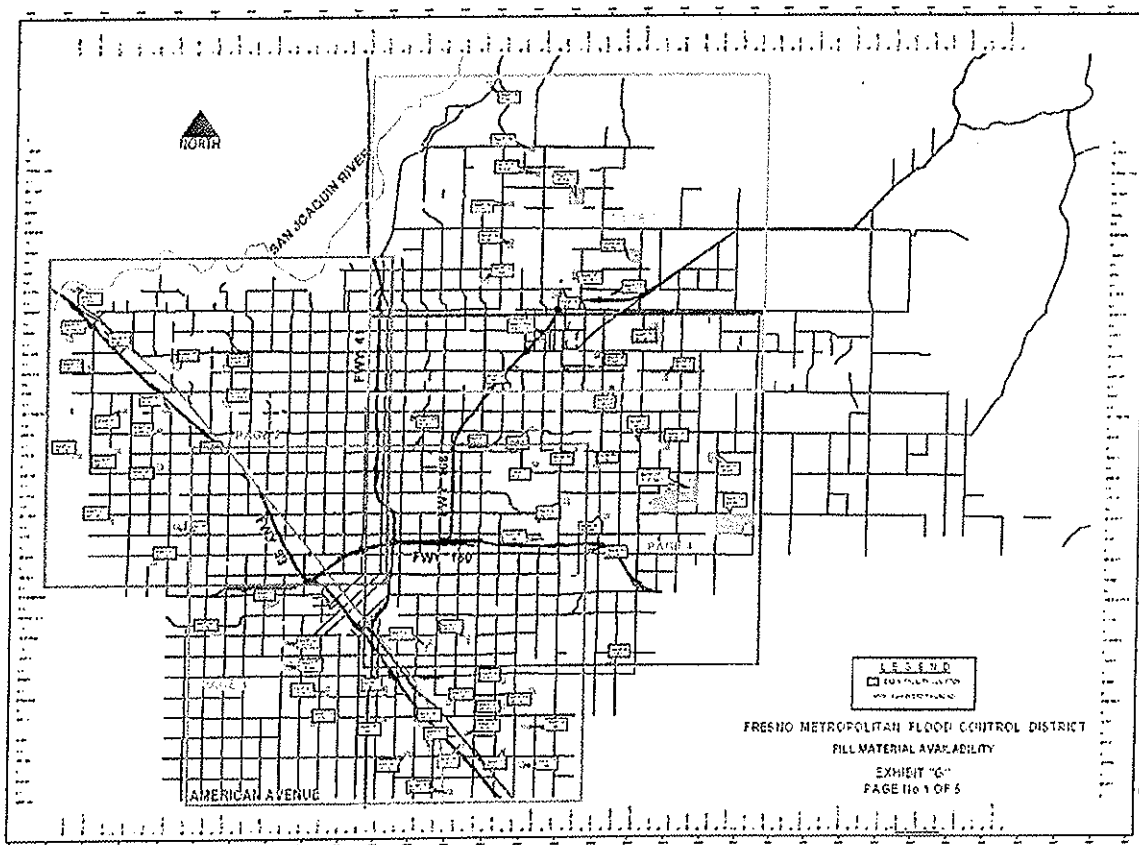
2.501 The service charge rates set forth in Section 2.400 of this Chapter may be adjusted by the Board of Directors when the Board determines the adopted rates no longer achieve full recovery of the District's cost of providing such services. Such adjustment of rates shall become effective no sooner than 60 days from adoption of a resolution of the Board of Directors setting forth such amendments.

2.502 The provisions of this Chapter may be amended, including the establishment of additional service charges, by the Board of Directors. Such amendments will become effective no sooner than 60 days from adoption of a resolution of the Board of Directors setting forth such amendments.

Date Adopted: April 14, 2004

California High Speed Rail Authority
MASTER AGREEMENT

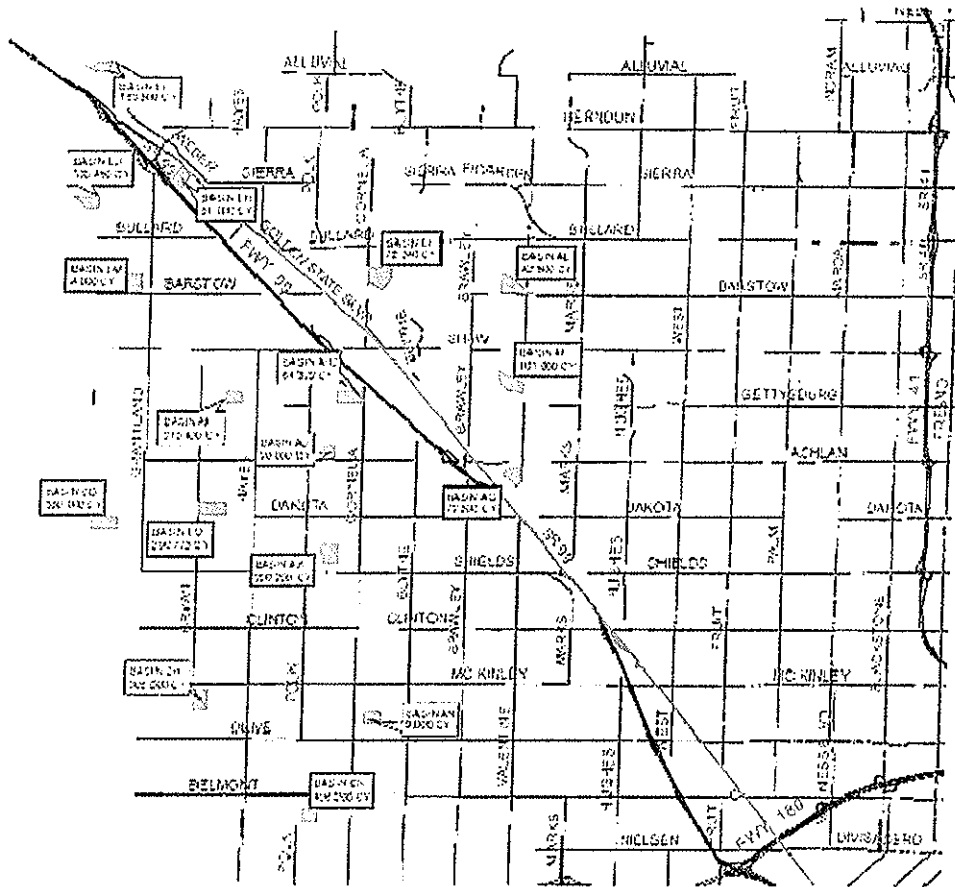
**APPENDIX G
STORMWATER BASIN LOCATIONS**



HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Basin Facility Location
- High Speed Railroad



BASIN FILL MATERIAL
AVAILABILITY

EXHIBIT "G"
PAGE No 2 OF 5

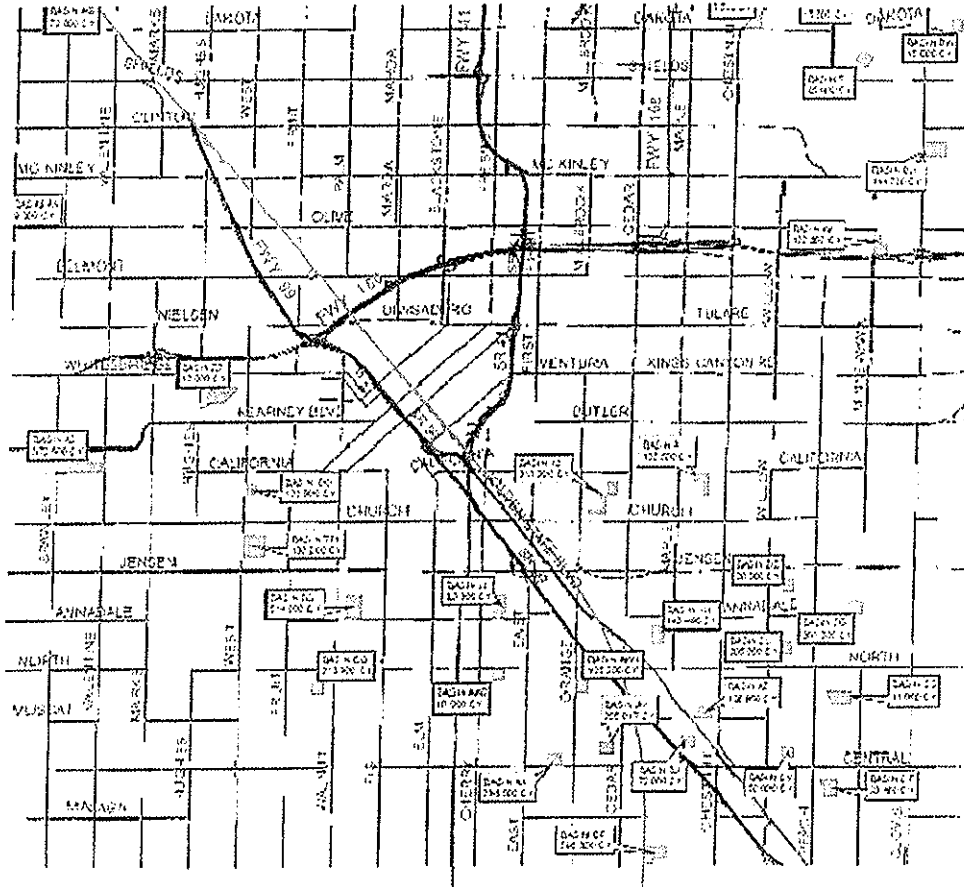


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
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
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NOTE:
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DISTANCES ARE APPROXIMATE.



LEGEND

 Basin Facility Location

 High Speed Railroad



BASIN FILL MATERIAL AVAILABILITY

EXHIBIT "G"
PAGE No 3 OF 5

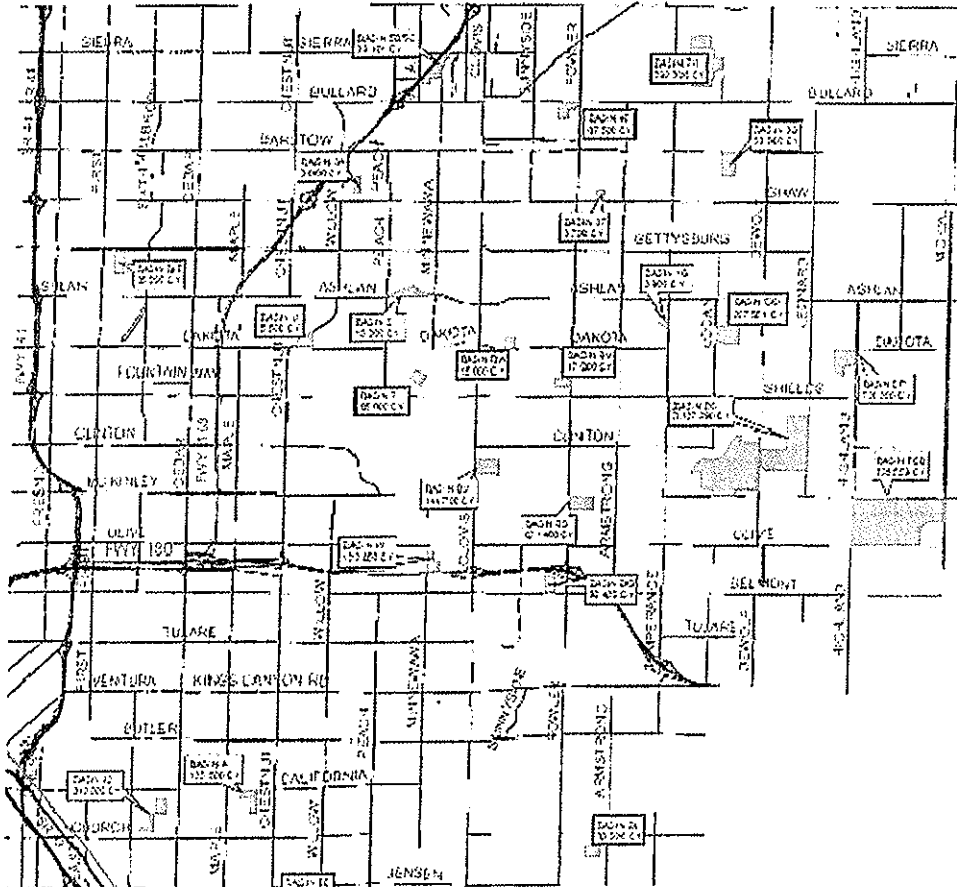


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: [illegible]
Date: 5-4-2012
From: K:\Work\2012\05\04\HSR\HighSpeedRail\Available\BFD\3-2-12

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NOTE:
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LEGEND

Basin Facility Location

High Speed Railroad



BASIN FILL MATERIAL
AVAILABILITY

EXHIBIT "G"
PAGE No 4 OF 5

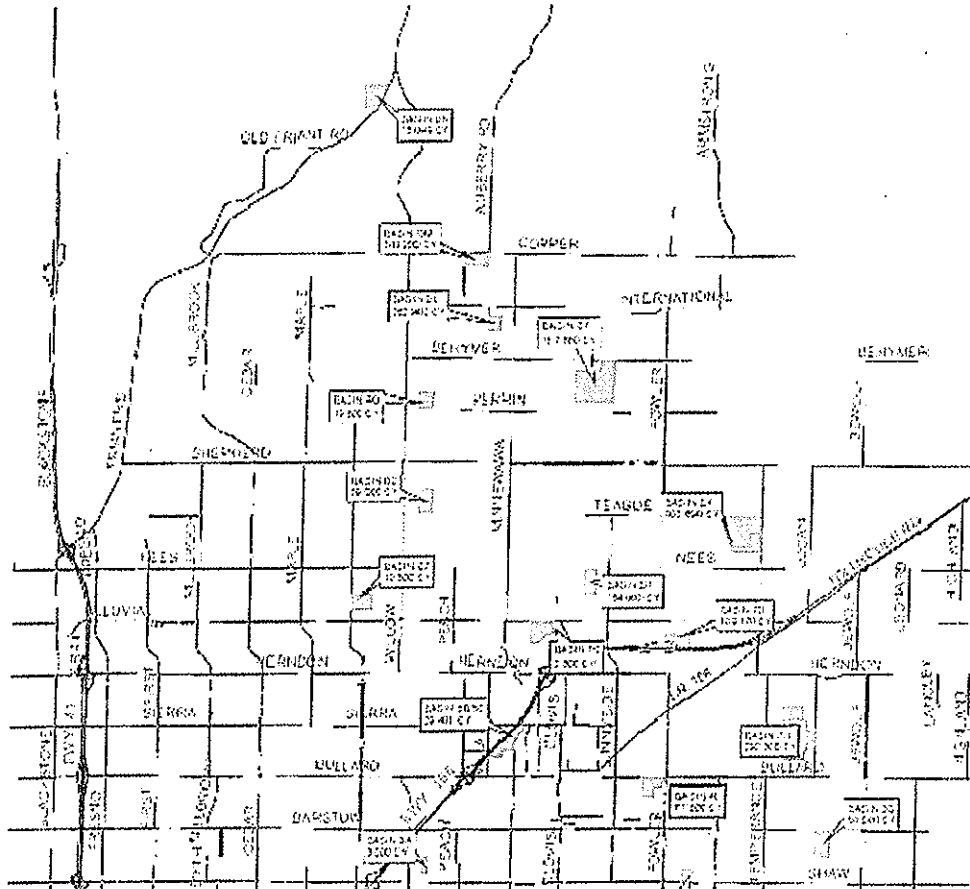


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
Prepared by: MWD
Date: 12-20-10
File: K:\Approved\CDMS\EXHIBIT High Speed Rail\Availability 01-12-2010

HSR13-06 - EXECUTION VERSION

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NOTE:
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LEGEND

Basin Facility Location

High Speed Railroad

BASIN FILL MATERIAL AVAILABILITY

EXHIBIT "G"
PAGE No 5 OF 5



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: HSR
Date: 5/4/2010
Page: 1/1

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California High Speed Rail Authority

MASTER AGREEMENT

APPENDIX H

SUMMARY PRELIMINARY DRAINAGE FEE

Based on CHSRA Preliminary Engineering Design

HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT

High Speed Train Summary Preliminary Drainage Fee

High Speed Train

| Drainage Area | Use | Rate/Ac | Acres | Fee |
|------------------|-------|----------|--------|----------------|
| EXEMPT "EI" | Comm. | \$15,640 | 1.08 | \$16,891.00 |
| EI | Comm. | \$15,640 | 1.05 | \$16,422.00 |
| EH | Comm. | \$13,090 | 12.18 | \$159,436.00 |
| AH | Comm. | \$11,010 | 16.78 | \$184,748.00 |
| AK | Comm. | \$8,890 | 10.14 | \$90,145.00 |
| EXEMPT "AL" | Comm. | \$6,960 | 14.25 | \$99,180.00 |
| NON-PLANNED "EH" | Comm. | \$13,090 | 2.63 | \$34,427.00 |
| EL | Comm. | \$9,970 | 3.32 | \$33,100.00 |
| EH | Comm. | \$13,090 | 9.92 | \$129,853.00 |
| CE | Comm. | \$14,730 | 7.58 | \$111,653.00 |
| AW1 | Comm. | \$17,090 | 5.08 | \$86,817.00 |
| EXEMPT "AW1" | Comm. | \$17,090 | 1.56 | \$26,660.00 |
| LL | Comm. | \$6,960 | 7.42 | \$51,643.00 |
| AY | Comm. | \$11,200 | 6.45 | \$72,240.00 |
| FF | Comm. | \$6,960 | 18.66 | \$129,874.00 |
| EXEMPT "RR" | Comm. | \$6,960 | 3.91 | \$27,214.00 |
| UU2 | Comm. | \$6,960 | 3.36 | \$23,386.00 |
| RR | Comm. | \$6,960 | 8.67 | \$60,343.00 |
| II1 | Comm. | \$6,960 | 18.91 | \$131,614.00 |
| II1 | Comm. | \$6,960 | 6.09 | \$42,386.00 |
| EXEMPT "II1" | Comm. | \$6,960 | 0.70 | \$4,872.00 |
| EXEMPT "XX" | Comm. | \$6,960 | 7.73 | \$53,801.00 |
| NON-PLANNED "CE" | Comm. | \$14,730 | 4.56 | \$67,169.00 |
| XX | Comm. | \$6,960 | 5.50 | \$38,280.00 |
| | | | 177.53 | \$1,692,154.00 |

Roadway Construction/Relocation

| Drainage Area | Use | Rate/Ac | Acres | Fee |
|---------------|------|----------|-------|----------------|
| AH | Road | \$11,010 | 29.80 | \$328,098.00 |
| EL | Road | \$9,970 | 3.85 | \$38,385.00 |
| EI | Road | \$15,640 | 1.60 | \$25,024.00 |
| EH | Road | \$13,090 | 39.92 | \$522,553.00 |
| AK | Road | \$8,890 | 6.21 | \$55,207.00 |
| EE | Road | \$6,960 | 1.29 | \$8,978.00 |
| UU2 | Road | \$6,960 | 2.75 | \$19,140.00 |
| XX | Road | \$6,960 | 5.35 | \$37,236.00 |
| | | | 90.77 | \$1,034,621.00 |

High Speed Train

\$1,692,154.00

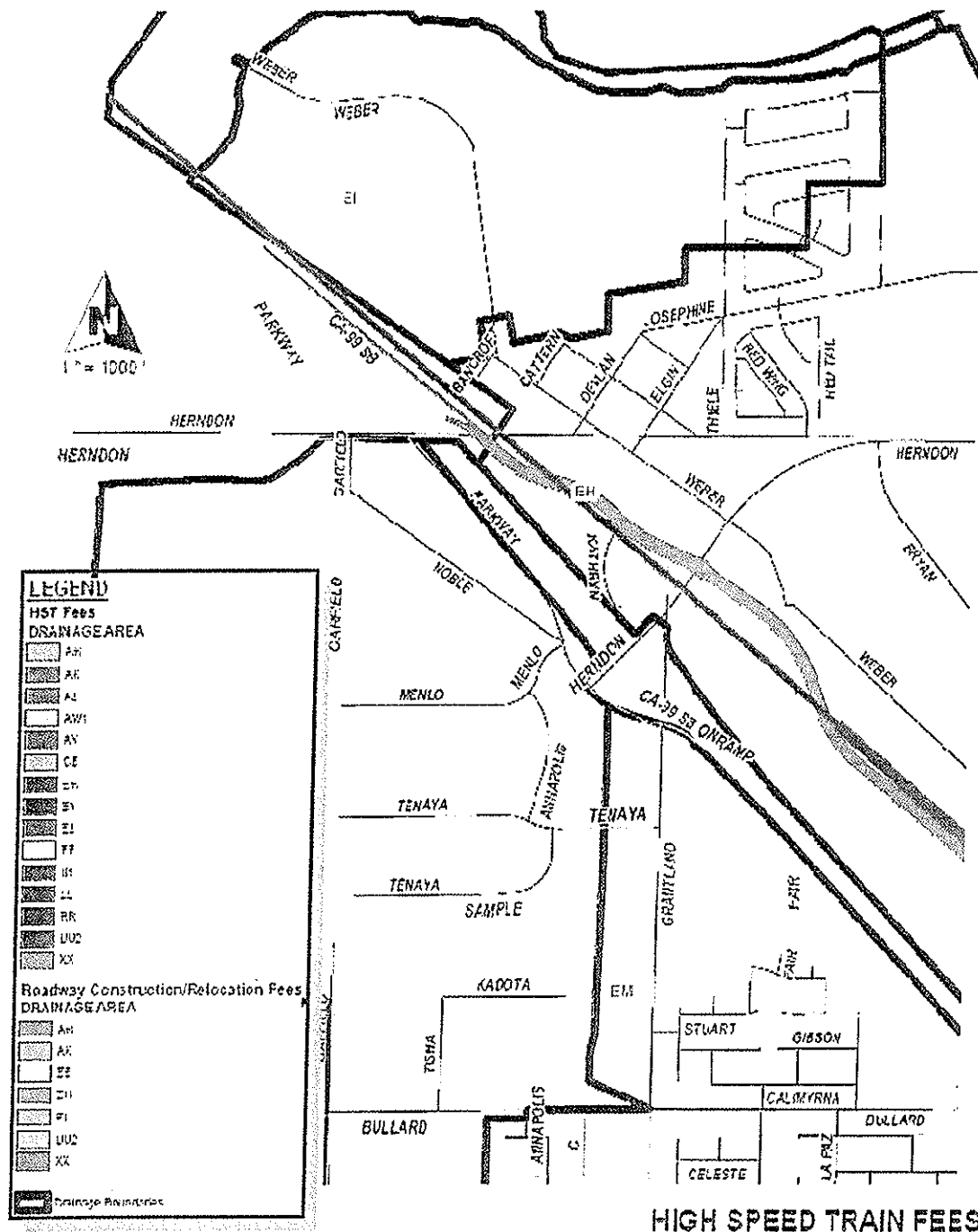
Roadway

\$1,034,621.00

Grand Total

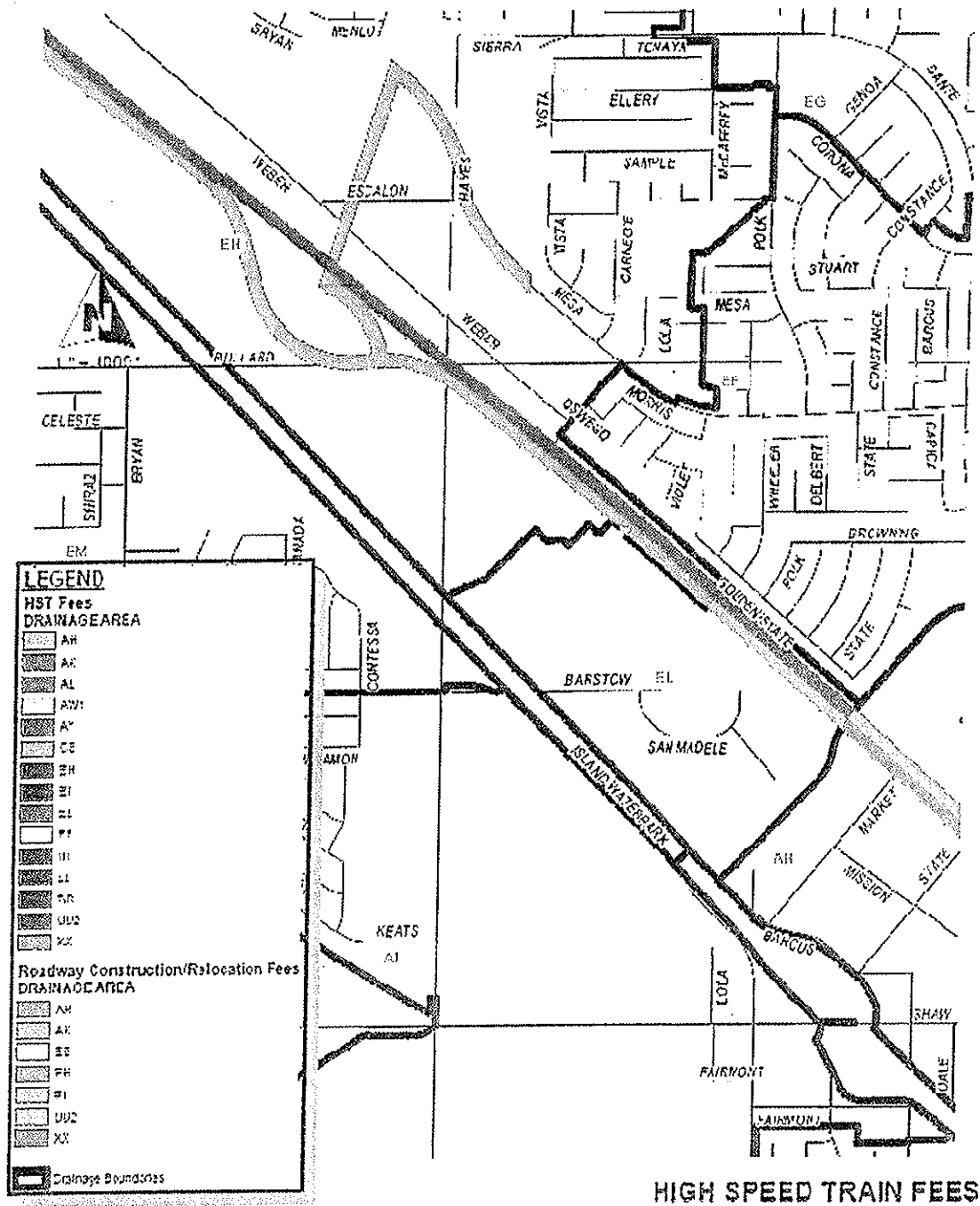
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California High Speed Rail Authority
MASTER AGREEMENT



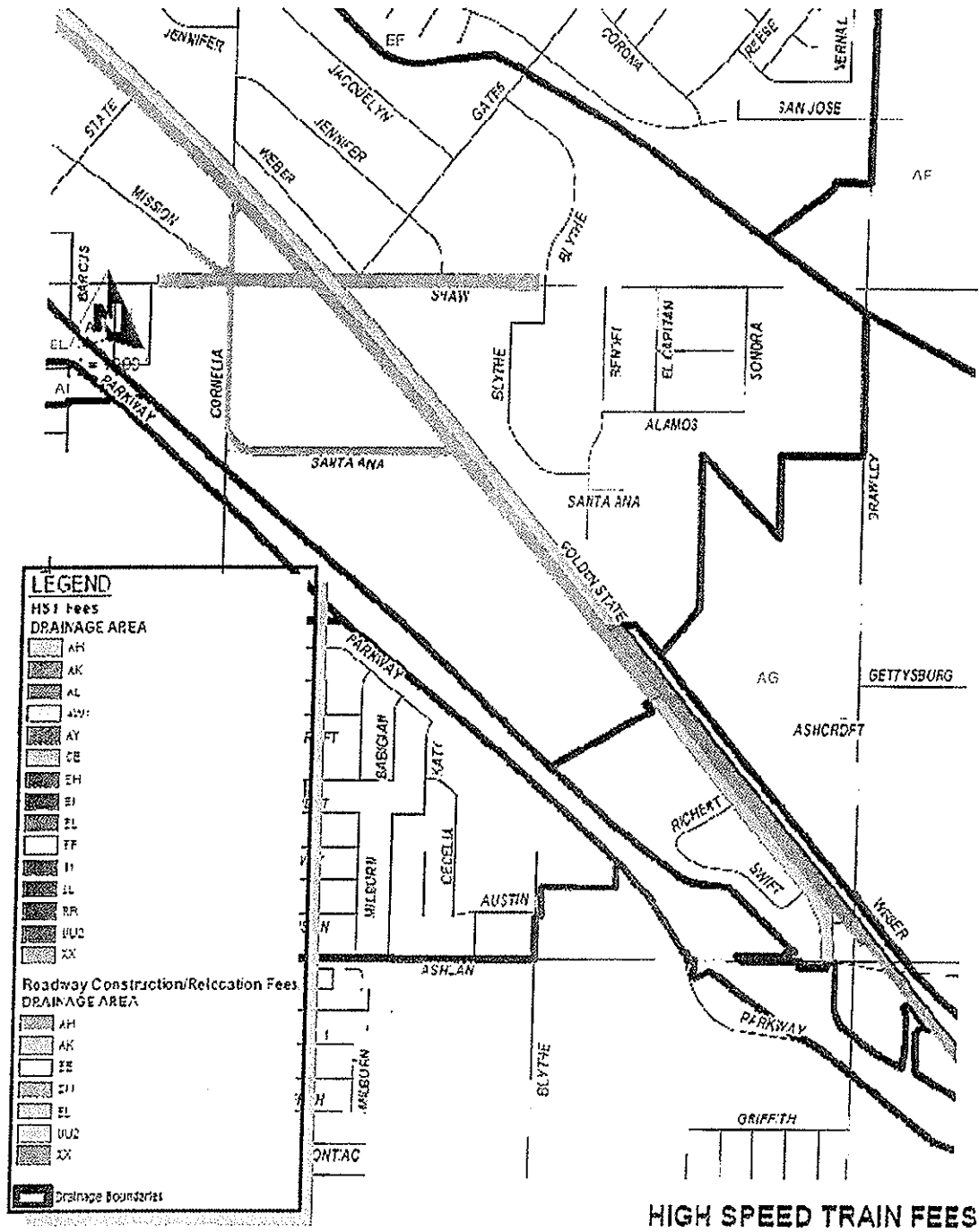
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MASTER AGREEMENT



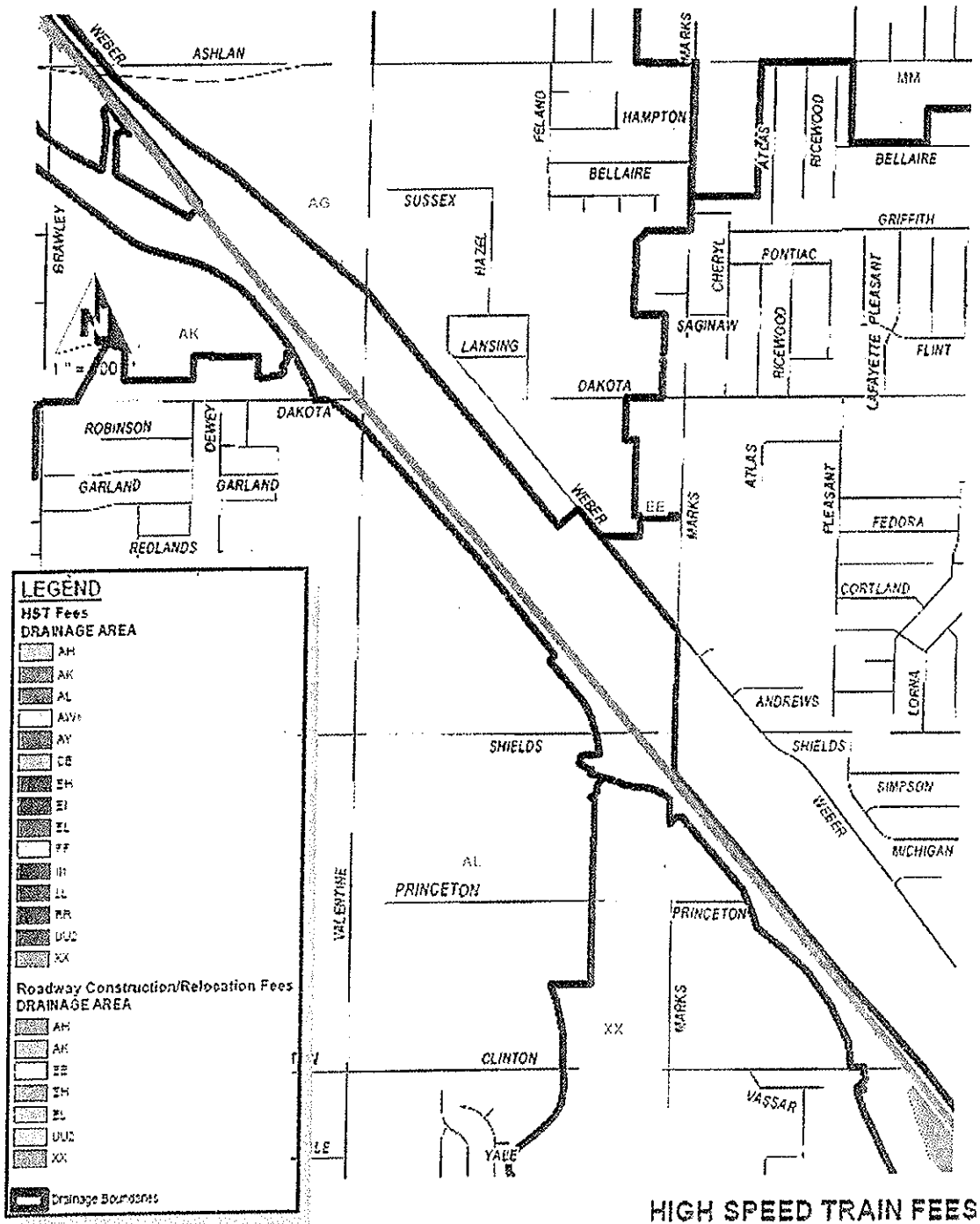
HSR13-06 - EXECUTION VERSION

California High Speed Rail Authority
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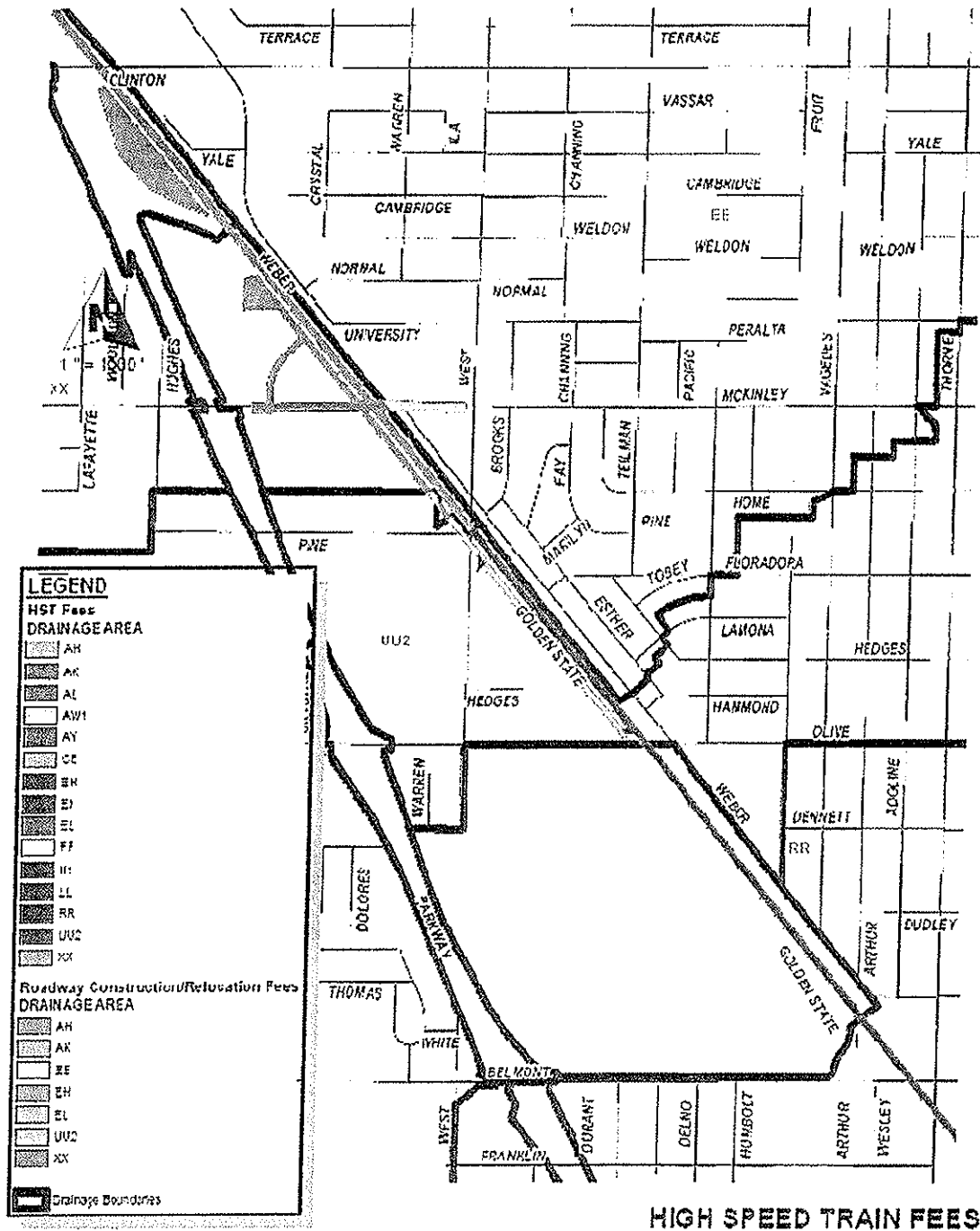
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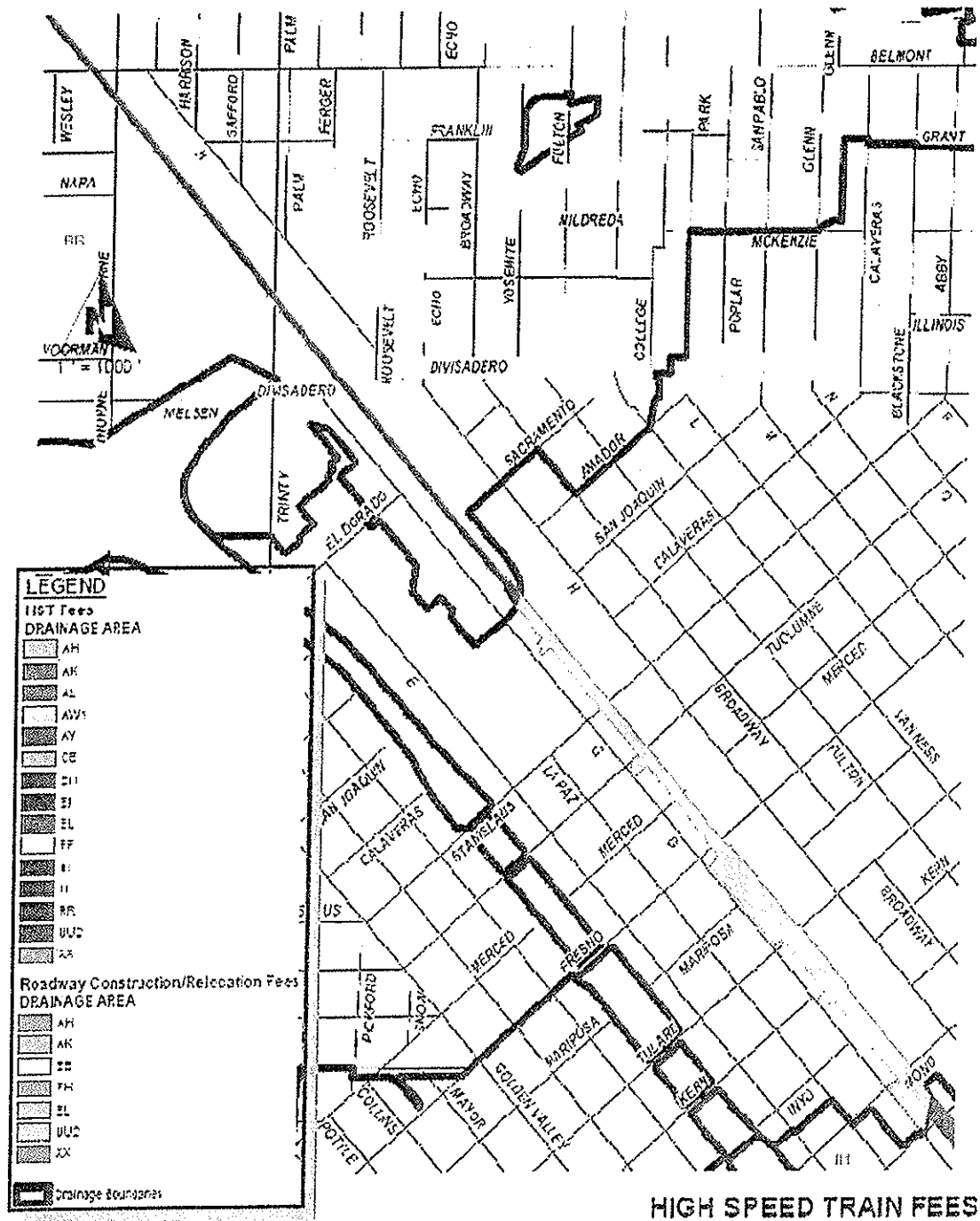
HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT



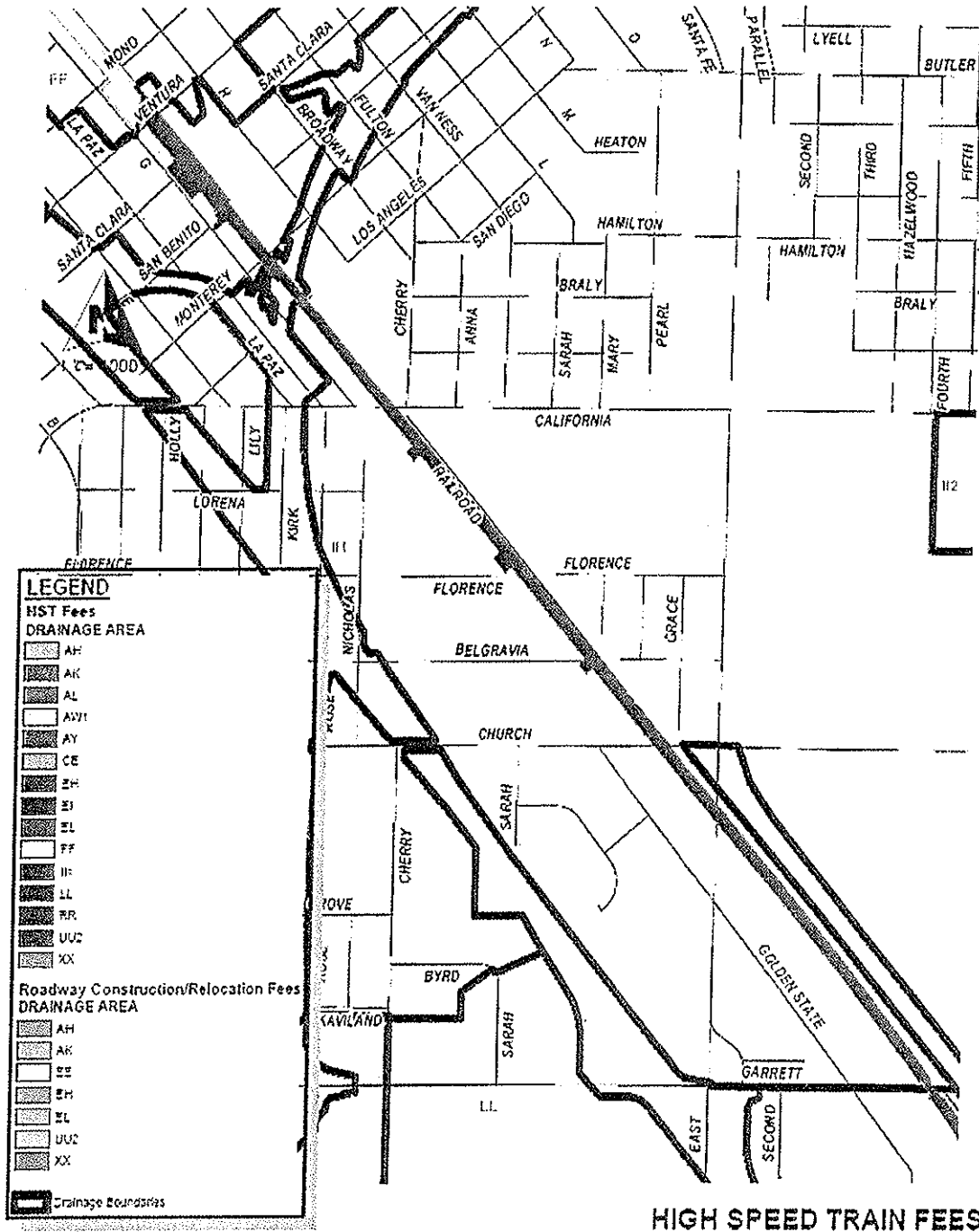
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California High Speed Rail Authority
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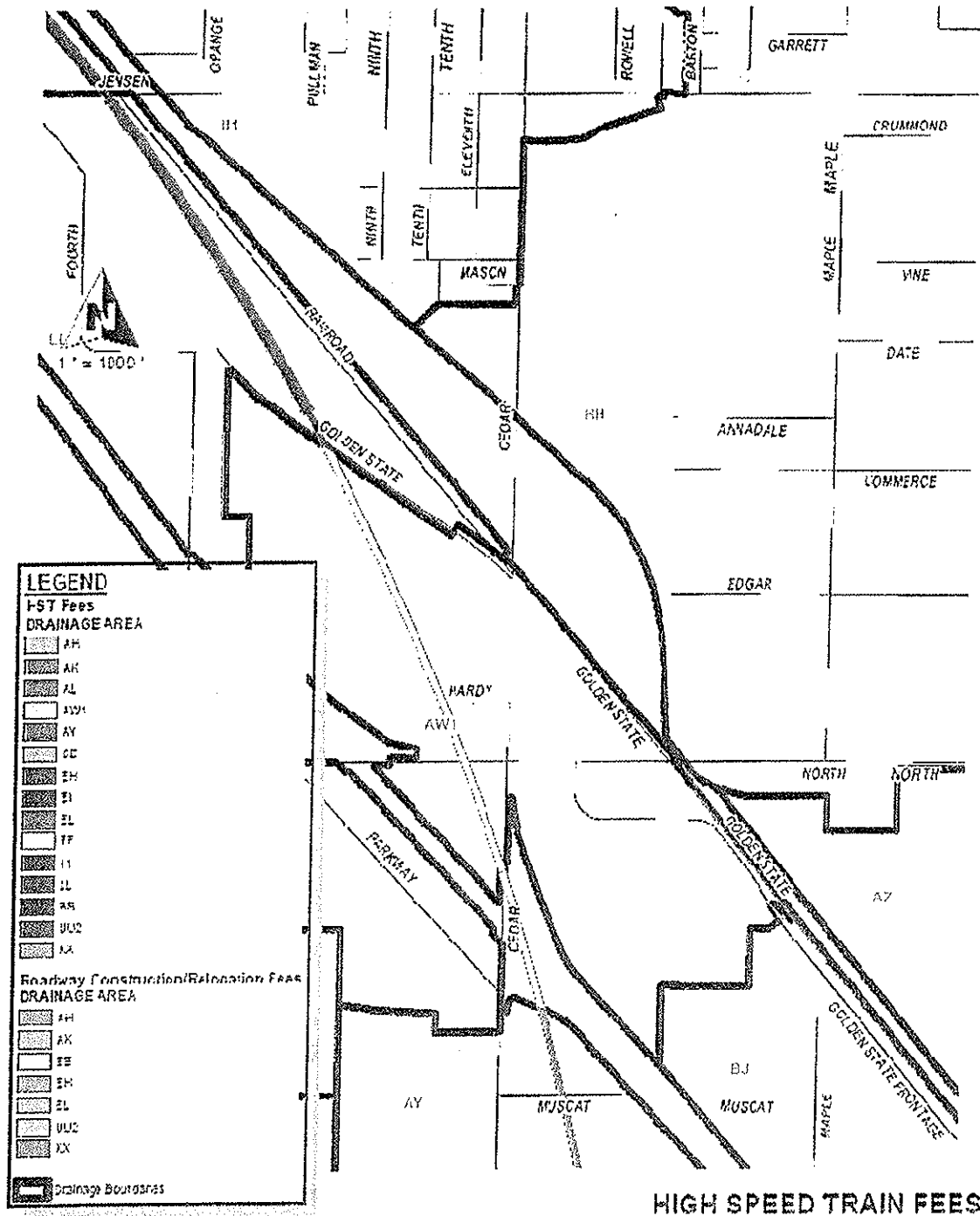
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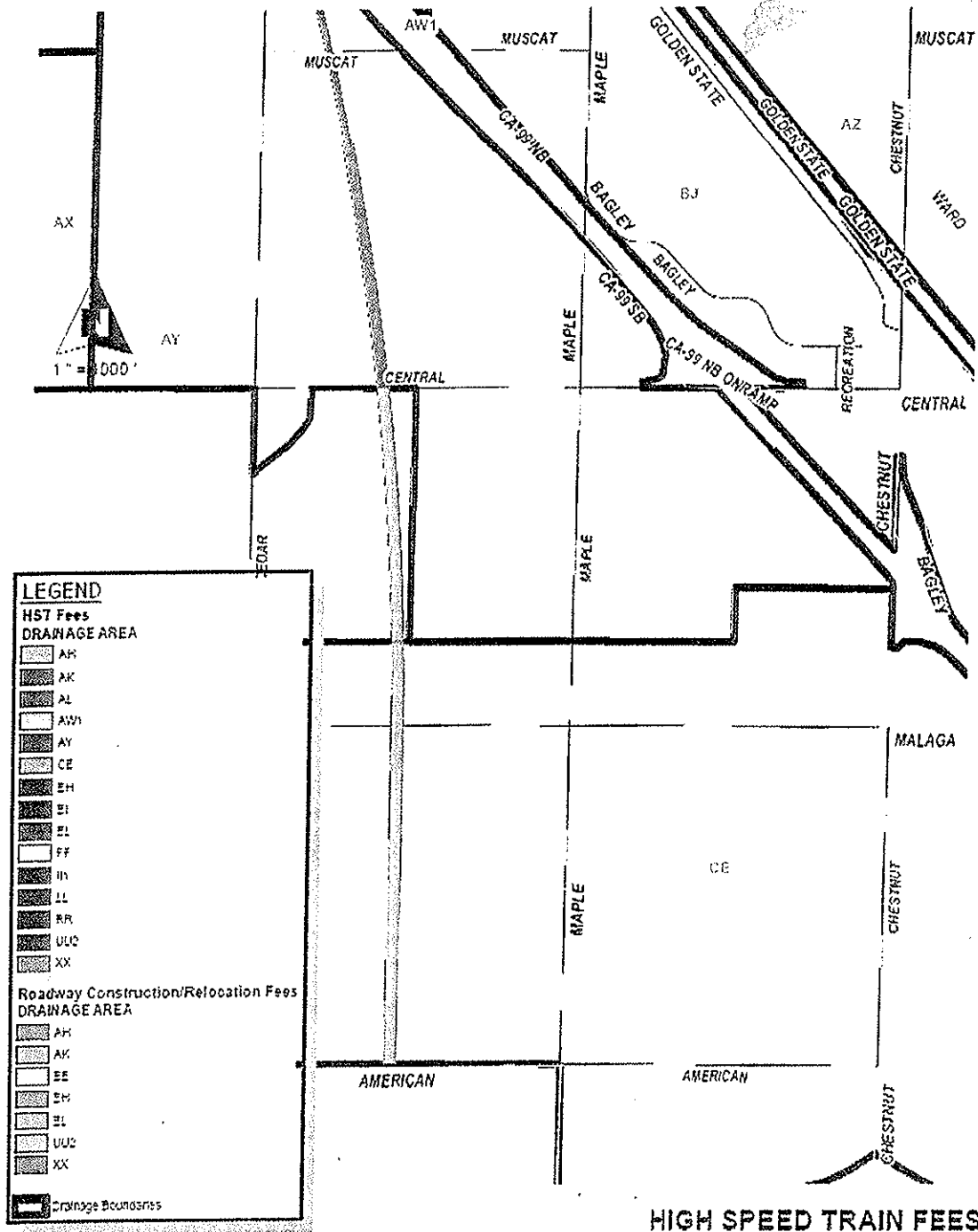
HSR13-06 - EXECUTION VERSION

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HSR13-06 - EXECUTION VERSION

5 Fresno County Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

County of Fresno

DRAFT

Table of Contents

| | |
|---|----------|
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List of Appendices

Appendix A: Design-Build Procedures

Appendix B: ARRA and Authority Provisions

Special Terms and Conditions

1. AMENDMENT (CHANGE IN TERMS)

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

2. TERMINATION

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

3. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions



- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.
- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

4. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

5. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.



6. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

6. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

7. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

8. RETENTION OF RECORD/AUDITS

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.



9. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.
- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

10. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

11. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

12. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.



- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

13.CONFIDENTIALITY OF DATA

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

14.STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.



15. DEBARMENT AND SUSPENSION CERTIFICATION

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

16. CONFLICT OF INTEREST

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.



Appendix C: Stakeholder Collaboration

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| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Agreement" or "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and the County of Fresno, a Political Subdivision of the State of California, whose principal mailing address for purposes of this Agreement is 2220 Tulare St, 6th Floor, Fresno, CA 93721, hereinafter referred to as the "LOCAL AGENCY".

RECITALS

WHEREAS, the Local Agency owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Local Agency's Facilities; and

WHEREAS, the HST Project will be built in multiple phases; and

WHEREAS, the Authority and the Local Agency desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Local Agency's Facilities throughout the various phases of the HST Project.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Local Agency agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work, as defined herein, other than any Excluded Entity.



1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

“Betterment” shall mean any upgrading of a replacement Facility that is not attributable to the construction of the HST Project and is made solely for the benefit of and at the election of the Local Agency, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

- A. Any upgrading necessary for safe and effective construction of the HST Project;
- B. Replacement devices or materials that meet equivalent standards although they are not identical;
- C. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- D. Any upgrading required by applicable laws;
- E. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
- F. Any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Local Agency at its own expenses, which are in effect as of the date of execution of the applicable Task Order.

1.4 Days

“Days” means calendar days, unless otherwise stated.

1.5 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.



1.6 Facility

“Facility” or “Facilities” means any Utility, as defined herein, and/or or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.7 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

1.8 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.9 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by notice to owner or otherwise) by an Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.



1.10 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.11 Party

“Party” refers to the Authority or the Local Agency, as the context may require and “Parties” means the Authority and the Local Agency, collectively.

1.12 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Local Agency’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.13 Right-of-way of Local Agency

“Right-of-way of Local Agency” means a property right held by the Local Agency in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Local Agency for the Facility to be located in a defined area of real property, including but not limited to a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Local Agency does not include a franchise or license.

1.14 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Local Agency’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.

1.15 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Local Agency, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.



1.16 Unforeseen Work

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.17 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.18 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.19 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.



2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority's Contractor and the Local Agency. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority's Contractor. The Task Order will set forth among other things, the arrangements between the parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the Facility Work. Format of the Task Order and its content shall be mutually agreed upon by the Authority, the Authority's Contractor, and the Local Agency.

2.3 Betterment Work at the Local Agency's Request

Any work considered Betterment made at the Local Agency's request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs to the Local Agency.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Local Agency shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by applicable law, including, without limitation, statute, superior rights, or prescriptive rights, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Local Agency, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Local Agency's Facility is located.

The Authority may enforce any obligation of the Local Agency's franchise or encroachment permit grantees on any Authority property and right of way including requiring any person who has placed and maintained any pole, pole line, pipe, pipeline, conduit, street railroad tracks, or other structures or facilities whether under that or any franchise or permit to move it at his or her own cost and expense to such different location in the Local Agency's jurisdiction as specified in a written demand by the Authority. The Authority shall provide a reasonable



time within which the Facility Work shall commence. Upon written request of Authority, Local Agency shall assist Authority in enforcing such rights by issuing to the relevant grantee any written Relocation notice required under the franchise or encroachment permit.

3.2 Authority's Expense

Unless the Local Agency agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights the costs for such work shall be borne by the Authority.

3.3 Local Agency's Expense

Facility Work will be performed at the Local Agency's expense where:

- A. Facility Work is a Betterment as defined in Section 1.3;
- B. The Local Agency is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Local Agency; or
- D. The Local Agency agrees to perform the work at its own expense.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Local Agency in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Disputed Cost Liability

In circumstances where a dispute exists between the Parties as to whether the Local Agency has a Prior Right to maintain and operate its facilities in their present location and which Party must bear the expense of Facility Work required for a Relocation pursuant to a Task Order, the Parties agree to proceed with the Facility Work required by the Task Order and to reserve the issue of liability for the cost of the Facility Work detailed in the Task Order as hereinafter provided. In such case, the Authority, either directly or through Authority's Contractor, shall advance funds for the cost of the Facility Work as if such costs were Authority's expense as provided in Section 3.2, of this Cooperative Agreement,

Authority and Local Agency agree that after execution of the Task Order for Facility Work where cost liability is disputed, they shall negotiate in good faith with the goal of reaching an agreement as to the allocation of costs for the Facility Work. If Local Agency fails to negotiate in good faith, or if no agreement is executed and delivered on or before ten (10) days after the date of completion of the Facility Work, then notwithstanding the disputes resolution process set



forth in Section 3.7 of this Cooperative Agreement, Authority shall have the immediate right to pursue a determination of the cost responsibility through either mandatory binding arbitration (pursuant to the arbitration process set forth in Section 3.7) or through litigation in a court of competent jurisdiction, in Authority's sole discretion. It is further agreed by Local Agency and Authority that in case of disputed liability, (a) neither the advance or return of funds pursuant to this Cooperative Agreement nor the performance by Local Agency of the Facility Work shall be deemed a waiver, compromise or admission of liability, (b) the fact that such advance and/or return of funds and performance of Facility Work occur shall not be pertinent to and shall not be considered or offered as evidence regarding the issue of liability, (c) the issue of liability shall be reserved for resolution by subsequent agreement, arbitration or litigation, and (d) the time for commencing an action for the recovery of any funds advanced by Authority for the cost of the Facility Work shall begin to run as of the tenth day after completion of the Facility Work, and Local Agency waives any applicable statute of limitation to the contrary to the extent permitted by law.

In the event that Local Agency ultimately is determined to be responsible for the Relocation costs, then Local Agency shall within 45 days from the date of such determination reimburse the Authority or the Authority's Contractor as directed by the Authority the full amount of all sums advanced that were determined to be the Local Agency's cost responsibility, plus interest from the date advanced or disbursed by Authority and computed in accordance with Section 1268.350 of the Code of Civil Procedure.

3.6 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Local Agency of the claim and the Local Agency will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Local Agency and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Local Agency under this Agreement, the Authority may withhold reimbursement to the Local Agency until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.7 Disputes

The Authority and the Local Agency agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which



shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting Local Agency's Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the Local Agency disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Local Agency shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the Local Agency may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the Local Agency. Failure of the Authority to provide a written decision shall be deemed denial of Local Agency's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority, 42 days from the Local Agency's original written objection, the Local Agency appeals such decision by written notice to the Authority.

In connection with any appeal of the Authority's decision, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is request, form the date of Local Agency's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing



regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the Local Agency, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the Local Agency's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Local Agency with respect to the disputed matter as a direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the Local Agency's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the Local Agency shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.

4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Local Agency, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Local Agency Performs Facility Work

When all or a portion of the utility work is to be performed by the Local Agency, the Local Agency agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Local Agency on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.



Upon the issuance of a Notice to Proceed, Local Agency shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Local Agency agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Local Agency in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Local Agency shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Local Agency is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Local Agency shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Local Agency shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Local Agency shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Local Agency shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance

The Local Agency and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Local Agency shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Local Agency in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an



endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:
 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice



to the Local Agency and the Authority shall be transmitted directly by the insurer to the Local Agency and the Authority. The Local Agency recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controlled insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Local Agency agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private Local Agencies, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the Local Agency for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

Subject to the requirements of the Public Information Act and to the maximum extent permitted by law, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:



- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility by the Local Agency, the Authority shall be entitled to credits as follows:
1. The amount of any Betterment to the utility Facility resulting from such relocation.
 2. The salvage value of any materials or parts salvaged and retained by Local Agency.
 3. If a new utility Facility or portion thereof is constructed to accomplish such relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of FACILITY}}{\text{Normal expected Life}} \times \text{Original Cost}$$

- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Local Agency.
- C. A credit allowance for age shall not be applied to publicly owned sewers.
- D. Eligible Local Agency costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. Local Agency agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at: <http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Local Agency in the amounts as established for Facility Work performed by the Local Agency, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Local Agency may be delegated to the Authority's Contractor; in such circumstances, the Local Agency agrees to the Authority's delegation of responsibility to the Authority's Contractor to make reimbursement payments to the Local Agency.

If Facility Work is at the Local Agency's expense and is performed by the Authority or the Authority's Contractor, the Local Agency shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work plus appropriate amounts for Betterments, salvage and expired service life. At the Authority's written direction given in its sole discretion, the Authority's Contractor may be authorized to accept such payment from the Local Agency; in such circumstances, the Local Agency agrees to the Authority's Contractor collection of reimbursement directly from the Local Agency.



5.3 Invoicing Procedures

Invoicing procedures will be mutually agreed upon by the Authority, the Authority's Contractor and the Utility Owner and set forth in Task Orders.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

The Local Agency's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Local Agency acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Local Agency to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Local Agency. In the event of a breach of this Agreement by the Local Agency, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Local Agency shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Local Agency to use due care in its dealings with others. The Local Agency shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Local Agency shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Local Agency shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Local Agency and without any right of the Local Agency to object or make any



claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Local Agency fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Local Agency's sole expense.

- F. Except as otherwise provided in this Section 6, the Local Agency agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Local Agency. Except as otherwise provided in this Section 6, the Local Agency shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

6.2 Default

In the event that the Local Agency breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Local Agency may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Local Agency to allow access to all public documents, papers, letters, or other material that is made or received by the Local Agency in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Local Agency, the Authority will notify the Local Agency in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The



Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Authority shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Indemnification

Each Party shall hold harmless, indemnify and defend the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Local Agency in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Local Agency. The Local Agency and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Local Agency in the defense of the claim or to require the Local Agency to defend the Authority in such claim as described in this section. The Authority's failure to notify the Local Agency of a claim shall not release the Local Agency from any of the requirements of this section.

The Local Agency's obligation to defend and indemnify shall not be excused because of the Local Agency's inability to evaluate liability or because the Local Agency evaluates liability and determines the Local Agency is not liable or determines the Authority is solely negligent. Only a



final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Local Agency. The Local Agency shall pay all costs and fees related to this obligation and its enforcement by the Authority. The Authority's delay in notifying the Local Agency of a claim shall not release the Local Agency of the above duty to defend.

6.4 Force Majeure

Neither the Local Agency nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the Local Agency by the Authority of the Authority's Contractor;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Local Agency related entity

The foregoing events shall relieve a Party of liability only if the Party's failure to perform as a result of such event is beyond its control and not due to an act or omission of the Local Agency related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Local Agency agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Local Agency for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;



- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Local Agency related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Local Agency related entity and not listed in the definition of Force Majeure above.

6.5 Local Agency's Facility and Right-of-way

The Local Agency's Facilities shall at all times remain the property of and be properly protected and maintained by the Local Agency.

Whenever the Local Agency's affected Facilities are to be relocated from the existing Right-of-way of Local Agency to a new location that falls outside such existing Right-of-way of Local Agency, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Local Agency, without charge to the Local Agency or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Local Agency for those rights previously held by the Local Agency in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the Local Agency shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the existing Right of Way of Local Agency so vacated.

If the existing Right-of-way of Local Agency includes fee title, the Authority shall acquire from the Local Agency, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Local Agency those remaining property rights appropriate for the placement and operation of the Local Agency's Facilities in the Right-of-way of Local Agency.

Upon completion of Facility Work by the Authority, the Relocated Facilities shall become the property of the Local Agency.

6.6 Applicability

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Local Agency's Facilities to accommodate or permit construction of the HST Project.



Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Local Agency or Excluded Entities with respect to Facilities pursuant to arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

6.7 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award to Authority's Contractor. Copies of the Authority policies and procedures will be provided to the Local Agency as soon as practicable after they become available. To the extent otherwise allowable pursuant to Title 23 C.F.R. Part 645, Subpart A, the Authority shall pay for any incremental costs incurred by the Utility Owner as a result of the application of Authority's policies and procedures that would not have been incurred pursuant to this Agreement absent such policies and procedures. This Agreement cannot be modified except by an instrument, in writing, signed by the Party to be charged.

6.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Local Agency shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to Local Agency:

Local Agency Name: County of Fresno, Department of Public Works and Planning



Person in Charge: Alan Weaver, Director
2220 Tulare Street, Suite 600
Address: Fresno, CA 93721
Facsimile Number

If to Authority:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz, Chief Counsel
Address: 770 L Street, Suite 800
Sacramento, CA 95814
Facsimile Number

6.11 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.12 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Local Agency and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Local Agency shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the Local Agency's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."



- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties. None of the rights, obligations or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Agreement to its successor or any entity acquiring all or substantially all of such party's assets.

6.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Local Agency shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

6.17 Special Terms and Conditions

The provisions included in Appendix D, "SPECIAL TERMS AND CONDITIONS," are hereby incorporated in and are integral to this Agreement, and the Local Agency shall ensure full compliance with these provisions in connection with this Agreement and subsequent Task Orders. References in such Special Terms and conditions to "Contractor" shall be deemed to refer to Local Agency. The Dispute provisions in Section C of the Special Terms and Conditions are superseded by the Dispute process in Section 3.6 of this Agreement.



6.18 Appendices

Appendices A, B, C and D to this Agreement are attached hereto and incorporated by reference herein. This Agreement and the Appendices are intended to be complementary and shall, to the extent reasonably feasible, be interpreted so as to give force and effect to all provisions. In case of conflict between the provisions of this Agreement and those set forth in the Appendices, or between the provisions of the Appendices, the provision with the most stringent standard applicable to the party to be charged shall take precedence.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

FACILITY OWNER:

Signature Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority

Signature Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title

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Appendix A: Design-Build Procedures

17. PERFORMANCE OF THE FACILITY WORK (PERFORMANCE BY AUTHORITY'S CONTRACTOR)

The method of performance to be utilized in the design and construction of the Facility Work, as described below ("Method"), will be specified in the executed Task Order for the particular Facility Work contemplated.

The Local Agency agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Local Agency, and (b) the Authority's Contractor's collection of reimbursement directly from the Local Agency having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work shall be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work.

- A. At such time as the Authority's Contractor has the HST Project plans prepared to a level where the impact on the Local Agency's Facilities and the nature and extent of the Facility Work can be determined, the Authority's Contractor shall prepare plans for the Facility Work (hereinafter referred to as "Facility Plans") and provide a copy of the Facility Plans to the Local Agency in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Local Agency's standards.
- B. The Local Agency shall have fifteen (15) working days from receipt of the Facility Plans to review them and provide comments, including any applicable technical requirements and standards, to the Authority's Contractor and the Authority. Failure to provide comments within such fifteen (15) working days shall be deemed approval.
- C. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Local Agency. The final Facility Plans shall incorporate the comments of the Local Agency provided such comments are reasonable and do not create inconsistencies with the contract between Authority and the Authority's Contractor. A detailed list of final method of inclusion of the Local Agency's comments shall be provided to the Local Agency by the Authority's Contractor.
- D. The Local Agency shall have fifteen (15) working days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Local Agency's comments are not fully addressed or incorporated, the Local Agency

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shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.

- E. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Local Agency. This section shall not apply until paragraph 2.E of Appendix A is satisfied.
- F. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
- G. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Local Agency, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.
- H. The Local Agency shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Local Agency's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- I. Upon completion of the Facility Work, the Local Agency agrees to accept ownership and maintenance of the constructed Facilities.
- J. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- K. The Authority's Contractor shall provide the Local Agency with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.

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Appendix B: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Local Agency. The Local Agency, however, is not a contractor.

“State” includes Authority.

HSR13-06 - EXECUTION VERSION



SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS**18.ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

19.ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

20.PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

21.REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

22.WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less



than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

23.INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

24.WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.



Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

25.FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

26.REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- b. The total amount of ARRA funds received by Contractor during the Reporting Period;
- c. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- d. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- e. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;



- v. The Program source
- vi. An award title descriptive of the purpose of each funding action;
- vii. The location of the entity receiving the contract;
- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- f. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.



6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.



6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and



made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11.CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12.TIMELINESS:

Time is of the essence in this Agreement.

13.COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14.GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15.ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.



- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16.CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

SPECIAL TERMS AND CONDITIONS

21.AMENDMENT (CHANGE IN TERMS)

- c. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- d. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

22.TERMINATION

This section regarding termination is in addition to GTC 610.

- c. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- d. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

23.EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions

- c. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- d. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

24.CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

25.INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

6. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

26.AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

27.CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

28.RETENTION OF RECORD/AUDITS

- c. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

29.AUDIT REVIEW PROCEDURES

- d. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.
- e. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for



review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.

- f. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

30. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

31. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

32. OWNERSHIP OF DATA

- e. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- f. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- g. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.



- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

33.CONFIDENTIALITY OF DATA

- f. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- g. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- h. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- i. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- j. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

34.STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

35.DEBARMENT AND SUSPENSION CERTIFICATION

- c. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;



- iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- d. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

36.CONFLICT OF INTEREST

- e. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
 - f. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
 - g. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
 - h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.
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Appendix C: Stakeholder Collaboration

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In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

“Issues Resolution Ladder” (IRL) – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

“Stakeholder Implementation Plan” (SIP) – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.

“Stakeholder Charter” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

2. STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.



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APPENDIX D

LOCAL AGENCY SPECIAL CONDITIONS

1. DESIGN STANDARDS

Authority's Contractor shall conform to the following Facility Work standards and criteria:

- a. Design Speed for Facility Work shall be 65 MPH
- b. Current California Department of Transportation standards shall apply as related to above selected Design Speed.
- c. Deviations from standards as defined in this Appendix D whether advisory or mandatory must be approved by DIRECTOR prior to completion of 30% plans. Approval of one deviation does not constitute approval to any other deviation from those same standards.
- d. Crossings shall remain opened to the greatest extent possible during the construction of Facility Work, and at no time shall two consecutive crossings be closed.
- e. Traffic management, haul routes, and detouring plans must be approved by DIRECTOR prior to closing any crossing. Shoulder widths determined pursuant to Current California Department of Transportation standards shall be increased as necessary to ensure compliance with San Joaquin Valley Air Pollution Control District Rule 8061.
- f. If public traffic is proposed to be conveyed through active construction sites, not less than one lane with a minimum width of 12 feet shall be available for safe conveyance of public traffic at all times when construction operations are actively ongoing, and not less than two lanes, each with a minimum width of not less than 12 feet shall be available for safe conveyance of public traffic at all times when construction operations are not actively ongoing. While under reversing, one-way traffic control, public traffic shall not be delayed in excess of fifteen minutes.
- g. If public traffic is proposed to be conveyed via off-site detour routes, Authority's Contractor shall prepare an analysis of the cost to the public to use the detour route for the intended duration of the closure as compared to the additional cost associated with routing public traffic through the active construction site. Such proposal and analysis shall be subject to review and approval or rejection by DIRECTOR. In cases where it is inherently unsafe or impracticable to convey traffic through active construction sites, Authority's Contractor shall so inform DIRECTOR and DIRECTOR may waive the requirement that an analysis of cost to the public



- h. All off-site detours shall utilize only public roads which are paved and centerline-striped and in good repair suitable for the volume of traffic anticipated.
- i. All local facilities shall include provisions for pedestrian access. All over crossings shall have pedestrian sidewalks in accordance with Federal, State and Local laws.
- j. Design for storm water mitigation shall be the responsibility of the Design Builder and shall not become the responsibility of the Local Agency.
- k. Embankment for overcrossings shall be designed in such a way to mitigate erosion by implementing hardscape techniques or flattening of the slopes.

2. EXISTING CONDITIONS

Authority's Contractor, prior to the beginning of any construction in relationship to Facility Work shall document the condition of all of Local Agency's facilities which will or may be impacted, either temporarily or permanently, including but not limited to potential detour routes and haul routes. Authority Contractor shall thereafter provide such documentation and allow adequate time for Local Agency review and verification thereof. Neither Authority Work nor Facility Work shall commence until DIRECTOR has issued written concurrence to Authority regarding Authority's Contractor documentation.

At the completion of construction of any/all Facility Work, Local Agency's Facilities which are not otherwise reconstructed or improved as Facility Work and which are impacted as a result of Facility Work shall be brought back to a state of repair at least equal to that originally documented by Authority's Contractor and concurred with by DIRECTOR. DIRECTOR has final approval of remediation work required for returning Local Facilities to their original state of repair.

3. SCHEDULE

Authority's Contractor shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with Local Agency, Authority's or Authority's Contractor's Project schedule and/or timeline as specified in the Task Order for that specific Facility Work. Authority's Contractor agrees to be solely responsible for all costs associated with any delay not inclusive of review time constraints by Local Agency, in completing the Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work. Costs associated with delays shall consist of, but shall not be limited to, cost incurred by the general Public associated with extended use of detours, loss of use of facility, detouring, signage, advertisement, and degradation of local roads used for purpose of detouring traffic and/or transporting construction materials.



4. LOCAL AGENCY'S FACILITIES

Local Agency's Facilities shall at all times remain the property of Local Agency and shall be properly protected and maintained by Local Agency; provided, however, that Local Agency shall not be required to protect Local Agency's facilities during Relocation thereof by Authority's Contractor and shall not be required to provide maintenance of such facilities during construction thereof except to the extent that need for such maintenance is not, directly or indirectly, precipitated by actions of Authority or Authority's Contractor

5. TRAFFIC

Furthermore, for determination of current traffic volumes, the Fresno Council of Governments' traffic model ("COG Model") in effect as of the date of execution of the Task Order pertaining to construction of such Agency Facilities shall be used. Design Traffic Volumes shall be those current traffic volumes contained in or interpolated from said COG Model, projected to reflect the anticipated traffic volumes upon completion of construction of all Agency Facilities impacted by Authority's Project. Such projections shall be provided by Authority's Contractor and shall account for any increased traffic volumes likely to occur as a result of modifications to Agency Facilities and/or otherwise resulting from Authority's Project. Such projections shall be subject to approval by DIRECTOR, which approval shall not be unreasonably withheld.

Improvements which, provided that they are required by application of the projected traffic volumes as described in the preceding paragraph to the Design Standards described in Appendix F of this Agreement, shall not be considered betterments include, but shall not be limited to: increases in lane and shoulder width, addition of paved shoulders or other shoulder treatments to comply with local air district rules, correction of vertical or horizontal profiles not meeting current Design Standards, the replacement or extension of existing structures to provide appropriate clear width, increased roadway structural sections, installation of bridge or culvert approach treatments, retrofit or reconstruction of existing traffic signals, installation of new traffic signals where such installation is warranted based on traffic volumes projected as described herein; and all ancillary work precipitated by such improvements.





6 Fresno Irrigation District Cooperative Agreement

ADDENDUM 9

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AGREEMENT REGARDING HIGH-SPEED RAIL CROSSING OF FRESNO IRRIGATION DISTRICT FACILITIES

THIS AGREEMENT is made effective as of _____, 2012 by and between (i) the California High Speed Rail Authority, an agency of the State of California (“AUTHORITY”) and (ii) the Fresno Irrigation District, a California irrigation district (“FID”). AUTHORITY and FID are sometimes referred to below individually as “Party” and together as the “Parties.”

RECITALS

A. FID owns, operates, and maintains certain facilities for the delivery of agricultural irrigation water and groundwater recharge (“FID Facilities”) under its authority as an irrigation district under Section 20500 et seq. of the California Water Code. FID’s service area includes portions of the AUTHORITY’S high-speed rail corridor.

B. The AUTHORITY desires to install, maintain, repair and replace certain high-speed rail related facilities (“Rail Facilities”) in and over real property in which FID has rights of way or owns in fee for FID Facilities. In many instances, the construction and operation of the Rail Facilities will require modification or replacement of FID Facilities.

C. The Parties desire to provide terms for the modification or replacement of various FID Facilities in connection with construction of Rail Facilities (“Projects”). The parties further desire to provide for the common use of their respective rights-of-way where such areas overlap.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the Parties agree as follows:

Article I DEFINITIONS

The following terms shall have the following meanings as used in this Agreement:

“AUTHORITY” is defined in the Preamble.

“AUTHORITY Project” means a segment of the Rail Facilities (as determined by the AUTHORITY) and the work undertaken or contracted for by the AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing Rail Facilities). All references herein to the “AUTHORITY Project” refer to the AUTHORITY Project that impacts the FID Facilities, and when used in reference to a particular FID Facility, refer to the AUTHORITY Project that impacts the referenced FID Facility.

“Betterment” means the cost of any upgrades to the FID Facilities not attributable to the AUTHORITY Project and made solely for the benefit, and at the election of, FID. As employed herein, for the sake of clarification Betterment does not include: (i) those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirements or any upgrades required by FID’s customary practices, drawings and specifications, or (ii)

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standards of practice and construction methods applied to comparable FID Facilities constructed by or for FID at its own expense, that are in effect as of the date of execution of the specific Task Order for that FID Facilities Work.

“Claims” is defined in Section 4.1.

“Common Use Area” is defined in Section 5.1.

“Common Use Agreement” is defined in Section 5.1.

“Construction Contract” means the contract between the AUTHORITY and the Authority’s Contractor for construction (with or without design) of the Project work that is impacting FID. All references herein to “the Construction Contract” refer to the Construction Contract(s) for the Project(s) that impact FID Facilities, and when used in reference to a particular FID Facility, refer to the Construction Contract that impacts the referenced FID Facility.

“Authority’s Contractor” is defined in Section 3.2.

“Engineer” is defined in Section 2.1.

“FID” is defined in the Preamble. For any provision of this Agreement where FID is to be indemnified, “FID” shall also include FID’s directors, officers, employees, agents and volunteers.

“FID Facilities” is defined in Recital A.

“FID Facility Work” is, in general, the modification, protection or Relocation of existing FID Facilities, or the construction of new FID Facilities (or any combination thereof) that will be or remain the property of FID.

“FID Right-of-Way” shall mean any real property rights held by FID for the location and operation of FID Facilities, including, but not limited to, fee title and easement rights.

“Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

“Rail Facilities” is defined in Recital B.

“Plans and Specifications” is defined in Section 2.1.

“Prior Rights” is defined in Section 3.11.

“Projects” is defined in Recital C.

“Relocation” means removal, protection or any other rearrangement or modification of an FID Facility as ordered and approved by the AUTHORITY to accommodate any of the AUTHORITY’S Projects that may impact FID Facilities. Relocation shall include, but not be limited to, the preparation and submission by Authority’s Contractor of Relocation plans or

drawings sufficiently engineered to allow for the construction of the ordered Relocation, and a detailed estimate by FID of the actual and necessary cost of the ordered Relocation including review and inspection for approval by the Authority and/or FID.

“Stakeholders” shall mean the AUTHORITY, the Authority’s Contractor, and all parties with property or facilities affected by a Project.

“Task Order” is defined in Section 3.3.

“Unforeseen Work” means any new and/or extra work found essential to the satisfactory completion of the Projects and not covered by any of the various Task Orders.

“Wasted Work” means design, design review, construction work or inspection performed by FID upon written direction from the AUTHORITY, for a Relocation rendered useless or unnecessary as a result of AUTHORITY’S cancellation and/or changes in the scope of work as agreed to by the Parties. This term includes any other design or construction work that is needed to accommodate the AUTHORITY Project and is subsequently rendered unnecessary .

Article II DESIGN AND ENGINEERING

2.1 Design/Build. AUTHORITY shall cause the Authority’s Contractor (as defined below) to prepare drawings, plans and specifications as necessary to set forth in detail the requirements for the FID Facility Work to be performed under this Agreement (the “Plans and Specifications”), as otherwise provided in Exhibit A hereto. The AUTHORITY shall cause Authority’s Contractor to select either Provost & Pritchard Engineering Group, Inc. or Blair, Church & Flynn, to design the Plans and Specifications (the “Engineer”).

Article III WORK TO BE DONE

3.1 FID Facility Work. The AUTHORITY or the Authority’s Contractor (as defined below) shall perform the FID Facility Work in accordance with the Plans and Specifications applicable to each Project. FID Facility Work includes the permitting related to the Relocation, as well as any necessary certification or coordination with regulatory agencies and any other miscellaneous work related to the Relocation of an existing or construction of a new (or any combination thereof) FID Facility. FID Facility Work specific to a particular FID Facility’s Relocation or replacement shall be detailed in a subsequently executed Task Order.

3.2 Authority’s Contractor. The FID Facility Work shall be performed by licensed, qualified contractors to be hired by the AUTHORITY (each an “Authority’s Contractor”). The Authority’s Contractor, subcontractors or other individuals directly or indirectly hired or employed by the AUTHORITY shall have the skills and experience required to perform the FID Facility Work assigned to them.

3.3 Task Orders. Work specific to particular FID Facilities relocation (i.e., a Project) shall be detailed in a subsequently executed Task Order Agreement to be executed by the AUTHORITY, the Authority's Contractor and FID ("Task Order"). Any deviation from the Plans and Specifications for a Task Order must be agreed upon by the Parties and memorialized in an amendment to the relevant Task Order, and no such deviation from the original Task Order shall commence without a fully executed amendment. The Task Order will set forth the arrangements between the Parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the FID Facilities Work for a specific FID Facilities. Format of the Task Order and its content shall be mutually agreed upon by the AUTHORITY, the Authority's Contractor, and FID, subject to the compliance of the requirements of this Agreement. Task Orders may cover relocation of a single FID Facility, or of a group of FID Facilities.

3.4 General AUTHORITY Responsibility. In performing the FID Facility Work, the AUTHORITY (either directly or through its Contactor) shall be solely responsible for:

- (a) Ensuring that that all construction means, methods, techniques, sequences and procedures, and construction quality conform to the Plans and Specifications, as modified by agreement of the Parties and Authority's Contractor;
- (b) Project site safety, including implementing, maintaining and supervising a project safety plan;
- (c) Coordinating all portions of the Project;
- (d) Implementation of all reasonable measures and precautions to prevent damage, injury or loss to: (i) all persons who are on the Project site or who could foreseeably be affected by construction of the Project; (ii) the Project and materials and equipment to be incorporated therein; and (iii) other property at or adjacent to the Project site;
- (e) Provision of appropriate security for the Project site;
- (f) Reasonable clean-up of the Project site at the end of each day during which work on the Project site is performed;
- (g) Risk of loss for damage to or loss to the FID Facility Work or of any property at the Project site occurring prior to final acceptance by FID;
- (h) Securing, at its expense, any permits and governmental approvals necessary for the proper execution and completion of the Project;
- (i) Giving any notices required by laws, ordinances, rules, regulations and lawful orders of public authorities;
- (j) Ensuring that all Projects remain free and clear of any and all claims for laborer, materials, and design services;

(h) Perform the FID Facility Work using best professional skill and judgment, acting with due care and in accordance with professional standards of care and construction practices generally accepted as standards of the industry in the State of California; and

(i) Complete the FID Facility Work on a timely basis, with due consideration given to FID's irrigation schedules.

When all or portions of the FID Facility Work are performed by the Authority's Contractor, FID shall have access to all phases of the FID Facility Work for the purpose of inspection to ensure that the relevant FID Facility Work is completed in accordance with the Task Order pertaining to that work; however, all questions regarding the work being performed will be directed to the AUTHORITY or its authorized agent for evaluation and final disposition. Notwithstanding the foregoing, FID shall not disrupt or interfere with the FID Facility Work or the AUTHORITY Project.

3.5 General Project Construction Requirements. General construction requirements for FID Facility Work are set forth in Exhibit C hereto. Exceptions from such requirements may be made for specific Projects by notice from the AUTHORITY to FID.

3.6 FID Representatives. FID shall be entitled to have a reasonable number of representatives, including the Engineer, on the site of each Project to verify that the work is being properly performed by the Authority's Contractor. The presence of such representative, however, is solely for FID's benefit, and shall not relieve the AUTHORITY of its obligation to supervise and perform the FID Facility Work in accordance with the Plans and Specifications and otherwise in accordance with this Agreement and the applicable Task Order. Notwithstanding the foregoing, FID representatives, including the Engineer, shall not disrupt or interfere with the FID Facility Work or the AUTHORITY Project.

3.7 Acceptance. Upon completion of a Project in accordance with the Plans and Specifications, as provided in writing by AUTHORITY or Authority's Contractor to FID, and after the expiration of the enforcement period for any stop notices filed in connection with the Project, FID shall accept ownership and maintenance of the constructed FID Facilities. FID shall not be required to accept ownership of any Project which is the subject of filed and ongoing litigation.

3.8 Unforeseen Work. If Unforeseen Work arises during the performance of the FID Facility Work, it shall be performed under the Task Order that is applicable to the FID Facility Work it arose in connection with. The AUTHORITY shall be responsible for the cost of any Unforeseen Work.

3.9 Hazardous Material. Upon discovery of Hazardous Material in connection with the FID Facility Work, both FID and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action in compliance with existing statutes or regulations concerning the disposition of Hazardous Material. The AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within the AUTHORITY's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that FID Facility Work, unless the Hazardous Materials are

attributable to or were exacerbated by the FID Facilities or FID's operations. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the AUTHORITY'S right of way which are required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of this Article III. Each party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

3.10 Betterment Work at FID's Request. Any work considered a Betterment, as defined herein, shall be agreed upon in advance by the Parties and detailed in a Task Order, along with costs and allocation of responsibility for such costs to FID.

3.11 Liability for Work. Liability for the cost of FID Facility Work shall be determined by statute, superior rights, prescriptive rights (under court order), contractual rights, permit or common law, as applicable, collectively referred to as Prior Rights. FID is responsible to prepare, document, and submit a claim for its declared right of occupancy for each FID Facility for which it claims Prior Rights, which claim shall be subject to the AUTHORITY'S approval. For each FID Facility, the allocation of liability determined pursuant to this Section 3 shall be stated in the relevant Task Order.

3.12 Authority's Expense.

(a) Unless FID agrees otherwise in writing, FID Facility Work will be performed at the AUTHORITY'S expense where by Prior Rights dictate that the cost for such work shall be borne by the AUTHORITY. FID shall have no responsibility to pay for any Facility Work, except as provided in Section 3.13 below. The AUTHORITY shall defend, indemnify, and hold FID harmless from any claims for design, labor, materials or similar items in connection with any FID Facility Work, except as provided in Section 3.13 below.

(b) The burden of establishing Prior Rights rests with FID. Prior Rights may be established by (i) recorded documents, plat maps, or other county records, (ii) originals or copies of documents granting an interest in the real property in question to FID, executed by the grantor, (iii) a written statement, executed by an officer of FID, indicating that according to FID's written records, FID has maintained a given facility in its current location for a the period of time necessary to establish Prior Rights, or (iv) any other historic document evidencing that an irrigation facilities (public or private) has been located in a given location for a the period of time necessary to establish Prior Rights.

3.13 FID's Expense. FID Facility Work will be performed at FID's expense where: (a) work is determined writing to be a Betterment ; (b) FID is unable to produce adequate documentation of its Prior Rights pursuant to Section 3.12(b) above; (c) it is determined by Prior Rights that the cost for such work shall be borne by FID; or (d) FID agrees in writing.

3.13 Shared Expense. FID Facility Work will be performed at the shared expense of the AUTHORITY and FID in circumstances where the Parties agree in writing to do so. The proportion of FID Facility Work expense to be borne by each Party shall be clearly identified in the Task Order for that FID Facility Work.

3.14 Liability in Dispute. In signing this Agreement, neither the AUTHORITY nor FID shall diminish their respective positions nor waive any of their respective rights nor does either Party accept liability for any disputed work. The AUTHORITY and FID reserve the right to have disputes regarding liability resolved by future negotiations or as otherwise provided in this Agreement.

3.15 Claims by Authority's Contractor. In the event the Authority's Contractor makes any claim against the AUTHORITY relating to the FID Facility Work, the AUTHORITY will notify FID of the claim, and FID will cooperate with the AUTHORITY in assessing and resolving the claim within the required by the Construction Contract.

3.16 Stakeholder Collaboration. In signing this Agreement, FID agrees to collaborate with the AUTHORITY, the Authority's Contractor, and any other third-party entities affected by the Project(s), including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as Stakeholders, to identify collaborative methods for resolving issues that may arise as part of the Project and/or FID Facility Work in an effort to achieve a quality AUTHORITY Project that meets the AUTHORITY Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the Project. During the initial workshop, Stakeholders will develop procedures and agreements (including Task Orders) as specified in Exhibit D, "Stakeholder Collaboration," included herein, to facilitate the Stakeholder relationship and aid in identifying and resolving issues as they arise throughout the Project(s).

Reimbursement to FID for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the AUTHORITY or the Authority's Contractor.

Subject to the requirements of the California Public Records Act, relevant judicial reference statutes and the California Evidence Code, neither the language of this Stakeholder clause, including the language in Exhibit D, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3.17 Cost of FID Facility Work. Cost of FID Facility Work includes the actual, allowable, allocable and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled FID Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to such FID Facility Work, and any necessary new FID Right-of-Way involved in the FID Facility Work, except that, the AUTHORITY shall be entitled to credit for the cost of any Betterment to the FID Facility included as part of the Project. A credit allowance for age shall not be applied to existing FID Facilities. Except as otherwise provided in this Agreement, eligible FID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A.

In any case in which the AUTHORITY is required under the provisions of this Agreement to pay its share of the cost of relocation of any FID Facility, AUTHORITY shall be entitled to credits as follows:

(1) The amount of any Betterment to the FID Facilities resulting from such Relocation;
and

(2) The salvage value of any materials or parts salvaged or retained by FID.

A credit shall not be allowed against any portion of the cost that is otherwise chargeable to FID.

A credit allowance for age shall not be applied to publicly owned sewers.

Eligible FID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. FID agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

In conjunction with the foregoing, FID acknowledges and agrees that it shall have no right to salvage any of the materials or parts contained within the FID Facilities and hereby assigns all such salvage rights to the AUTHORITY.

3.18 Payment for the Cost of FID Facility Work.

(a) If the FID Facility Work is at the AUTHORITY's expense, then the AUTHORITY shall pay the Authority's Contractor directly, less the credits determined. FID shall be responsible to pay the Authority's Contractor for the amount of any credits given to the AUTHORITY as described in subsection (b) below.

(b) If FID Facility Work is at FID's expense and is performed by the Authority's Contractor, FID shall pay or cause payment to be made to the Authority's Contractor (as designated by the AUTHORITY in written notice to FID) in the amounts established pursuant to this Agreement for the cost of FID Facility Work, plus the amount of any credits as determined in Section 3.17.

3.19 Invoicing Procedures. FID will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor, which shall provide for payment to FID not later than 45 days after submission of invoice.

Article IV INDEMNITY AND INSURANCE

4.1 Indemnity by AUTHORITY.

(a) To the fullest extent permitted by law, the AUTHORITY shall defend, indemnify, and hold FID harmless from and against any claims, liabilities, damages, losses and expenses, of any nature whatsoever, arising out of or resulting from the performance of the FID Facilities Work ("Claims"), excepting only such Claims as may be proximately caused by the

fault or negligence of, or by the willful misconduct of, FID or its employees, directors, agents, servants, or independent contractors who are directly responsible to FID. Such indemnity shall extend to Claims occurring after completion of the Project in question, as well as during the construction of such Project.

(b) The AUTHORITY's obligation to defend and indemnify shall not be excused because of the AUTHORITY's inability to evaluate liability or because the AUTHORITY evaluates liability and determines the AUTHORITY is not liable or determines that FID is solely negligent or has acted with willful misconduct. Only a final adjudication or judgment finding that FID is solely negligent or has acted with willful misconduct shall excuse performance of this provision by the AUTHORITY. The AUTHORITY shall pay all costs and fees related to this obligation and its enforcement by FID. FID's delay in notifying the AUTHORITY of a claim shall not release the AUTHORITY of the above duty to defend.

(c) When the AUTHORITY receives notice of a Claim that may have been caused by FID in the performance of services required under this Agreement, the AUTHORITY will immediately forward the Claim to FID. The AUTHORITY and FID will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the Claim. After reviewing the Claim, the AUTHORITY will determine whether to require the participation of FID in the defense of the Claim or to require FID to defend AUTHORITY in such Claim. The AUTHORITY's failure to notify FID of a claim shall not release FID from any of the requirements of this section or Section 4.2.

4.2 Indemnity by FID. To the fullest extent permitted by law, FID shall defend, indemnify and hold the AUTHORITY harmless from and against any Claims arising out of or resulting from the sole or exclusive negligence or willful misconduct of FID or its employees, directors, agents, servants, or independent contractors who are directly responsible to FID. FID's obligation to defend and indemnify shall not be excused because of FID's inability to evaluate liability or because FID evaluates liability and determines FID is not liable or determines AUTHORITY is solely negligent or has acted with willful misconduct. Only a final adjudication or judgment finding that the AUTHORITY is solely negligent or has acted with willful misconduct shall excuse performance of this provision by FID. FID shall pay all costs and fees related to this obligation and its enforcement by the AUTHORITY. The AUTHORITY's delay in notifying FID of a Claim shall not release FID of the above duty to defend.

4.3 Insurance. Any contract entered into by the AUTHORITY in connection with the FID Facility Work shall contain a provision which requires the Authority's Contractor, as part of the liability insurance requirements, to provide an endorsement (in form acceptable to both Parties) to each policy of general or automobile liability insurance that names as additional insureds to such policy (not subject to any premiums or assessments) FID and the AUTHORITY and their respective officers and employees, as well as such other additional insureds as either Party shall reasonably require (provided that the risk and cost assumed by either Party under this Agreement does not increase as a result of naming such other additional insureds). The parties referred to in the previous sentence are collectively referred to herein as the "Additional Insured Group." Unless otherwise mutually agreed by the Parties, the Authority's Contractor shall provide evidence of at least [required coverages and liability amounts to be determined]. Prior to commencement of any FID Facility Work, an insurance certificate evidencing the required

coverage shall be provided to FID and the AUTHORITY, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to FID and the AUTHORITY.

Article V AREAS OF COMMON USE; RELOCATED FID FACILITIES

5.1 Common Use Areas. FID Facilities shall at all times remain the property of and be properly protected and maintained by FID; subject, however, to the following. Whenever affected FID Facilities will remain within the AUTHORITY's right-of-way (a "Common Use Area"), the AUTHORITY and FID shall jointly execute an agreement for common use of the subject area, such agreement shall be in accordance with the AUTHORITY'S policies and procedures for joint or common use of the AUTHORITY'S right of way and which shall include the terms and conditions set forth in Exhibit E hereto (a "Common Use Agreement").

5.2 Relocation of FID Rights-of-Way. Whenever affected FID Facilities are to be Relocated from the existing FID Right-of-Way to a new location, the AUTHORITY shall convey or cause to be conveyed a new right-of-way for such relocated Facilities on terms and conditions that are substantially similar to the existing FID Right-of-Way. For such Relocations, the AUTHORITY shall issue, or cause to be issued, to FID, without charge to FID, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and FID for those rights previously associated with the existing FID Right-of-Way. Without limiting the foregoing, if FID has exclusive rights to the existing FID Right-of-Way, any replacement right-of-way shall provide similar FID with similar exclusive rights, except to the extent that the new location falls within the right-of-way under the jurisdiction of the AUTHORITY. In that event, the AUTHORITY and FID shall jointly execute a Common Use Agreement. In consideration for these replacement rights being issued by the AUTHORITY, FID shall subsequently quitclaim to the AUTHORITY, or its nominee, within the AUTHORITY's Right-of-Way, all of its corresponding right, title and interest in and to the FID Right-of-Way so vacated. Upon completion of the FID Facility Work by the AUTHORITY, the new FID Facilities shall become the property of FID, and FID shall have the same rights in the new location that it had in the old location, as modified by agreements in writing between the AUTHORITY and FID.

5.3 Compensation for FID Fee Title. If the existing FID Right-of-Way includes fee title, the AUTHORITY shall acquire from FID, for just compensation under California law, those property rights required by the AUTHORITY for the Rail Facilities by separate transaction, leaving to FID those remaining property rights appropriate for the placement and operation of the FID Facilities in the FID Right-of-Way, as reasonably determined by FID. Upon completion of FID Facility Work by the AUTHORITY or the Authority's Contractor, the new FID Facilities shall become property of FID, and FID shall have the same rights in the new location that it had in the old location, as modified by agreements in writing between the AUTHORITY and FID.

Article VI MISCELLANEOUS

6.1 Assignment to Authority's Contractor; AUTHORITY to Remain Liable. The AUTHORITY shall be responsible to ensure that the Authority's Contractor performs all obligations required to be performed by the Authority's Contractor hereunder. The AUTHORITY may assign this Agreement to the Authority's Contractor, but such assignment shall not relieve the AUTHORITY from liability hereunder.

6.2 Compliance with Public Works Laws. The AUTHORITY shall be responsible to comply with or ensure compliance by the Authority's Contractor with all applicable California and federal laws relating to the construction of public works projects, including, but not limited to, applicable provisions of the California Public Contract Code, the California Labor Code, and any laws or regulatory requirements associated with the use of federal funds ("Public Works Laws"). The AUTHORITY acknowledges that FID does not have extensive experience with public works projects that involve state and federal funds, and that FID has elected to have the AUTHORITY perform the FID Facilities Work for, among other reasons, the purpose of utilizing the AUTHORITY's resources in complying with Public Works Laws. The AUTHORITY shall defend, indemnify and hold FID harmless from and against any Claims arising from failure to comply with Public Works Laws, except where the responsibility for compliance with such laws cannot legally be shifted from FID.

6.3 Compliance with CEQA. The AUTHORITY shall be solely responsible for all environmental review and other actions required under the California Environmental Quality Act and any other state or federal environmental review laws applicable to any Project ("Environmental Review Laws"), except for those actions which by law cannot be delegated to another agency and must be taken by FID. To the maximum extent permitted by law, the AUTHORITY shall defend, indemnify and hold FID harmless from and against any Claims arising from any failure to comply with Environmental Review Laws as described in this Section 6.3.

6.4 State Funds. No state funds or resources are allocated or encumbered as against this Agreement and the AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.5 American Recovery and Reinvestment Act and Authority. To the extent applicable, the provisions included in Exhibit E, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in this Agreement.

6.6 Force Majeure. Neither FID nor the AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has: (a) promptly notified the

other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as practicable.

6.7 Time. Time is of the essence of this Agreement and each and all of its provisions.

6.8 Effect of Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

6.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto.

6.10 Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

6.11 Counterparts; Fax and Email Signatures. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Facsimile and electronic mail signature pages shall constitute originals, however, without affecting the enforceability of such signatures as originals, each party shall provide original signature pages to the other parties within five (5) business days of the execution of this Agreement.

6.12 Assignment; Binding Effect. Neither party shall assign any interest in this Agreement without the express written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, the AUTHORITY shall be permitted to assign this Agreement to the Authority's Contractors without the consent of FID. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

6.13 Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

6.14 Disputes. The AUTHORITY and the LOCAL AGENCY agree that, as a general principle, the PARTIES shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the LOCAL AGENCY disagrees with a determination or matter made by the AUTHORITY, the LOCAL AGENCY shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the PARTIES shall attempt to resolve such dispute through the partnering process, which may include escalation

with the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the LOCAL AGENCY shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the LOCAL AGENCY. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the LOCAL AGENCY mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In connection with any appeal of the AUTHORITY'S decision, the LOCAL AGENCY shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the LOCAL AGENCY shall continue with or permit the continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the AUTHORITY'S responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either PARTY, within the timeframe specified above, elect to refer a dispute to binding arbitration, then within 30 days after such request, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 *et seq.* and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Madera County.

If it is determined, on appeal, that the AUTHORITY'S interpretation of the Agreement, direction to the LOCAL AGENCY, or any other action required by the AUTHORITY's decision was an erroneous determination of the rights and obligations of the PARTIES under the Agreement, the LOCAL AGENCY's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the LOCAL AGENCY with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in the LOCAL AGENCY'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

6.15 Professionals' Fees. Should any action or proceeding be commenced between the Parties concerning this Agreement, or the rights and duties of any party in relation thereto, the Party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing Party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

6.16 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall lie in the County of Fresno, California.

6.17 Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

6.18 Survival. Each of the terms, provisions, representations, warranties, and covenants of the Parties shall be continuous and shall survive the completion of any FID Facilities Work contemplated in this Agreement.

6.19 Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) or on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To AUTHORITY: California High Speed Rail Authority
Thomas Fellenz, General Counsel
770 L Street, Suite 800
Sacramento, CA 95814
Fax: (916) 322-0827

To FID: Fresno Irrigation District
2907 South Maple Avenue
Fresno, CA 93725-2218
Attn: General Manager
Fax: (559) 233-8227

A Party may change its address for notices by providing notice to the other parties as provided above.

6.20 Severability. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.21 Default. In the event that either Party breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the other Party may (a) pursue a claim for damages suffered, or (b) perform any work with its own forces or through subcontractors and seek repayment for the cost thereof. Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary

damages could be inadequate to compensate for delays in the construction of the AUTHORITY Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay the AUTHORITY Project or Project construction.

6.22 Project Cancellation. If any portion of the AUTHORITY Project is canceled or modified so as to eliminate the necessity of the FID Facilities Work, the AUTHORITY will notify FID in writing, and the AUTHORITY reserves the right to terminate this Agreement as to such Project by amendment. The amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

California High Speed Rail Authority, an
agency of the State of California

Fresno Irrigation District, a California
irrigation district

By _____

Its _____

By _____
Jeff Neely, President

AUTHORITY Legal Review

By _____
Gary R. Serrato, Secretary

By _____
AUTHORITY Legal Counsel

HSR13-06 - EXECUTION VERSION

EXHIBIT A

DESIGN BUILD PROCEDURES

The following process shall apply separately to each phase or segment of the Project, as established in accordance with the agreement between the Authority's Contractor and the AUTHORITY.

A-1 Initial Coordination.

- (a) The AUTHORITY will develop 30% design submittals of the Rail Facilities, showing locations of existing FID Facilities.
- (b) FID will furnish markups to the AUTHORITY of the 30% submittals within 15 working days.
- (c) The AUTHORITY will prepare proposed preliminary design plans that indicate which FID Facilities are to be Relocated and conceptual arrangements of the Relocated facilities.
- (d) FID will verify, to the best of its ability, the correctness of the proposed preliminary design plans prepared by the AUTHORITY.
- (e) These plans will form the basis of the Plans and Specifications. Once the Plans and Specifications have been approved by FID, FID shall have sole and full responsibility for the accuracy of depicted FID Facilities.

A-2 Plans and Specifications. The Authority's Contractor, together with the Engineer, shall perform all design services for the FID Facilities Work in connection with each Project.

- (a) The Authority's Contractor will provide a preliminary copy of Project-specific Plans and Specifications to FID according to the AUTHORITY's Contractor's approved schedule and may include intermediate, Released for Construction (RFC) and As Built Stages.
- (b) FID shall have fifteen (15) working days from receipt of the preliminary Plans and Specifications intermediate submittal to review them, and to provide comments to the AUTHORITY's Contractor. FID shall also provide any applicable technical provisions and standard drawings along with its comments.
- (c) At such time as the Authority's Contractor has prepared RFC Plans and Specifications for the FID Facilities Work, the AUTHORITY's Contractor will provide a copy thereof to FID. The RFC Plans and Specifications shall incorporate the comments of FID provided that the comments are reasonable.
- (d) FID shall have fifteen (15) working days from receipt of the RFC Plans and Specifications to review them and provide final comments to the AUTHORITY.

(e) The Authority's Contractor shall make final corrections to the RFC Plans and Specifications and provide a copy to FID.

(f) The Authority's Contractor shall perform the FID Facilities Work in accordance with the RFC Plans and Specifications as corrected by FID.

(g) The AUTHORITY shall provide FID with as-built drawings of FID Facilities Work. The as-built drawings shall be in the format provided for in the Task Order for that particular FID Facilities Work.

(h) FID's failure to provide review and comment of plans submitted by the AUTHORITY or the AUTHORITY'S Contractor within the time periods specified in this Agreement, including but not limited to Plans and Specifications, shall be deemed approval of plans allowing the AUTHORITY to proceed with design and construction of FID Facility Work.

EXHIBIT B

General Project Construction Requirements

B-1 Replacement of Existing Pipelines and Small/Medium Channel Open Canals.

- (a) All open channels and existing pipelines shall be replaced with ASTM C-361 Rubber Gasket Reinforced Concrete Pipe (RGRCP).
- (b) All pipelines shall be buried to a minimum depth of 36 inches.
- (c) If an FID Facility is to be relocated, the AUTHORITY shall acquire an exclusive easement on FID's behalf, at FID's standard widths for such facility and on FID's standard terms and conditions.
- (d) All work shall conform to FID standards and specifications.

B-2 Large Canal Crossing Requirements. Crossings for large canals shall protect the canal's integrity for an urban setting, and shall be designed to convey the water in a safe and efficient manner without altering the existing conditions in a negative manner in regards to FID's operations and maintenance. Additional requirements include:

- (a) Minimum freeboard of 2.0 feet through the canal crossing shall be maintained where possible. Crossings shall be clear span bridges with no obstructions within the canal whenever reasonably possible.
- (b) Multiple bay culverts or bridges with pilings design must include sufficient access to remove trash in a safe and efficient manner, including additional access easement rights if necessary. Maintenance accessibility for trash removal shall be evaluated based on channel size, the amount of trash anticipated at the location in question and accessibility. Galvanized steel or concrete catwalk will be required on the upstream side of the bridge/culvert structure for FID's crews to access the collected trash. Trash piers, board guides, aprons and ladders shall be constructed in accordance with FID's current requirements.
- (c) Sufficient easement rights for FID to dredge the canals in accordance with its standard practices, including access for heavy equipment and trucks.
- (d) Relocation of existing road crossings which parallel Rail Facilities, such as Golden State Boulevard, must include access to both canal banks from the road. In general, a 50-foot wide drive approach narrowing to 20 feet wide drive bank will be required for each canal bank; different road crossings may require different access routes.
- (e) Culverts are to be extended past the AUTHORITY's right-of-way such that FID's equipment can safely access both banks for operations and maintenance purposes. All culverts require a minimum a minimum of 20 feet for 1 ton vehicle access; some crossings may need to be extended for larger equipment.

(f) Sufficient turnaround areas to accommodate the types of equipment necessary to maintain the FID Facility in question. Larger turnaround areas will be required for larger trucks and equipment.

(g) Gaps between bridges and culverts shall be of sufficient length for FID to reasonably maintain the gap area. Gaps that are too small for FID to maintain, as determined by FID in its reasonable discretion, shall not be permitted, and the two crossings shall be combined into a single crossing.

(h) At transition areas between bridge/culvert and open canal:

(i) Canal slopes shall be stabilized as necessary to shape side slopes to 1.5:1 (H:V) and shall be compacted to a minimum of 93 percent of maximum density.

(ii) All disturbed soil shall be concrete lined (both side slopes and bottom). In areas close to the Rail Facilities where access will be potentially dangerous for maintenance workers, structurally reinforced concrete will be required to minimize on-going maintenance activities.

(iii) Drive banks must be sloped a minimum of 2% away from the canal with provisions made for rainfall. Drainage will not be accepted into and must be routed away from canals, and must be conveyed to nearby public streets or drainage system by drainage swales or other alternatives reasonably acceptable to FID.

(iv) Drive banks shall be overlaid with 3 inches of Class 2 aggregate base course for all-weather access.

(v) All existing trees, bushes, debris, old canal structures, pumps, canal gates, and other non- or in-active FID and private structures must be removed within the FID Right-of-Way.

(i) All work shall conform to FID standards and specifications.

B-3 Construction Windows. All construction must occur outside FID's irrigation season. The permitted construction window is determined each year by the FID Board of Directors based on hydraulic conditions, but is typically between October 1 through February 22. An exception to the above construction window requirement can only occur by mutual agreement between Authority's Contractor and FID.

B-4 Stormwater Routings. Where FID Facilities are used by the Fresno Metropolitan Flood Control District and/or the Army Corps of Engineers for stormwater and flood control, a bypass may be required, depending on the canal system, construction schedule, water season, and storm season. If a bypass is not constructed, all water will be required to pass through the Project site.

(a) FID will determine the minimum flow rate if a bypass is required. The Engineer shall design the bypass system at the AUTHORITY's Contractor's expense. The bypass system shall include facilities as necessary to convey waters downstream and away from

the Project, and shall be the responsibility of the Authority's Contractor to install and maintain at all times.

(b) Should a bypass channel be constructed, a drive bank on both sides of the channel shall be incorporated for maintenance and operation purposes.

(c) Cofferdams (if any) must be constructed one foot below the canal's high water level.

(d) The AUTHORITY shall obtain appropriate easements or other rights necessary for the construction and operation of any bypass facilities located outside the existing FID right of way. The AUTHORITY shall cause the landowner and any parties in possession of the property where the bypass channel is located to release FID from any liability in the operation of such bypass.

B-5 Elevated Rail Facilities. Where Rail Facilities are to be located above grade:

(a) Pilings or columns for elevated Rail Facilities crossing FID pipelines shall be located outside of the FID Right-of-Way. Alternatively, the AUTHORITY may cause the pipeline to be replaced with RGRCP as described in Section B-1 above, with large spread footings for pilings or columns.

(b) Pilings or columns for elevated Rail Facilities crossing FID open canals may not be located in FID Right-of-Way. Gaps between elevated Rail Facilities over open canals shall be of sufficient length for FID to reasonably maintain the gap area. Portions of canals within such gaps that are too small for FID to maintain, as determined by FID in its reasonable discretion, shall be replaced with underground pipe.

(c) Sufficient clearance shall be provided over both canal maintenance/access roads for FID's largest equipment being hauled on a large tractor truck and trailer, unless the Rail Facilities right-of-way is to be fenced, eliminating access.

(d) If the Rail Facilities right-of-way is to be fenced, the AUTHORITY shall pipe the canal or place the canal within a culvert, such that routine maintenance is no longer necessary, and shall provide FID with an additional upstream trash collection location.

B-6 General.

(a) To the extent the Authority's Contractor needs import material for the Project, FID has material available for export from FID ponding basin properties currently under its ownership, dependent on seasonal conditions. Authority's Contractor is responsible to verify that the material is suitable for use and material quantities available for exporting.

(b) Without limiting the foregoing, new canals shall not be subject to materially greater amounts of siltation than the canals to be replaced.

(c) All work shall be performed in accordance with FID's customary practices, drawings and specifications.

EXHIBIT C
Terms for Common Use Agreements

FID shall consent to the construction, reconstruction, maintenance or use by the AUTHORITY of Rail Facilities over, along and upon FID Rights-of-Way subject to the following terms and conditions. Additional terms in any Common Use Agreement shall not be inconsistent with the following.

C.1 FID Prior Right. The AUTHORITY shall acknowledge FID's title (as established pursuant to Section 3.13 above) to FID's easement (or fee title) in said Common Use Area and the priority of FID's title over the title of the AUTHORITY therein.

C-2. Preservation of Existing Rights. Subject to FID's rights under Section C-5 below, Both the AUTHORITY and FID shall use said new location in such a manner as not to interfere unreasonably with the rights of the other. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which FID or the AUTHORITY may now have or may hereafter acquire resulting from the construction of additional facilities or the alteration of existing facilities by either the AUTHORITY or FID in such a manner as to cause an unreasonable interference with the use of said new location by the other party.

C-3 Damage to FID Facilities. The AUTHORITY shall repair or replace at the AUTHORITY's sole expense any FID Facilities damaged by or as a result of the maintenance, repair or replacement of the Rail Facilities. In the event the AUTHORITY fails, neglects, or refuses to commence to repair such damage within 30 days after written notice from FID or otherwise fails to proceed diligently in repairs or replacement, FID shall have the right, but shall not be required, to make any such repairs or replacements, and the AUTHORITY shall repay to FID the cost of any such repairs or replacement with interest at the rate of 10% per annum from the date(s) amounts were expended by FID.

C-4 Operation of FID Facilities. The manner, method and time of conducting and discharging water through any FID Facilities shall be in the sole and absolute control of FID, and the nature and extent of FID's rights to FID Facilities in any Common Use Areas shall in no way be diminished or restricted by the presence of any Rail Facilities. Except as herein otherwise provided, neither FID nor AUTHORITY shall have any right, title, or control over the other's property, except as provided by law.

C-5 Release. FID shall not be liable for any damage to Rail Facilities located within Common Use Areas, or to any other the AUTHORITY property associated with such facilities, that may result from FID's operation of FID Facilities, with the exception of damages caused by FID's negligence or willful misconduct.

HSR13-06 - EXECUTION VERSION

EXHIBIT D – STAKEHOLDER COLLABORATION

In order to accomplish the AUTHORITY Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 3.16 “Stakeholder Collaboration.” As part of this collaboration, a cooperative management team will developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Cooperation and collaboration are strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Use of the procedures described below is mandatory, but the results are non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of FID Facilities Work.

INITIAL KICK-OFF WORKSHOP

The Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the Project:

- A. “*Issues Resolution Ladder*” (*IRS*) – a hierarchy of those individuals within the Project including the Stakeholders and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Collaboration Implementation Plan*” (*CIP*) – the intention of the CIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the FID Facilities Work to be addressed by the Stakeholders.
- C. “*Cooperative Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholders vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the stakeholders relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve Project issues.

EXHIBIT E – ARRA AND AUTHORITY PROVISIONS

1. ARRA T&C

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

08/10/09

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS**

- (i.) The name of the project or activity;
 - (ii.) A description of the project or activity;
 - (iii.) An evaluation of the completion status of the project or activity; and
 - (iv.) An estimate of the number of jobs created and /or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
- (i.) The name of the entity receiving the contract;
 - (ii.) The amount of the contract;
 - (iii.) The transaction type;
 - (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - (v.) The Program source;
 - (vi.) An award title descriptive of the purpose of each funding action;
 - (vii.) The location of the entity receiving the contract;
 - (viii.) The primary location of the contract, including the city, state, congressional district and country;
 - (ix.) The DUNS number, or name and zip code for the entity headquarters;
 - (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
 - (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.
- Any other information reasonably requested by the State of California or required by state or federal law or regulation.***
- Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

2. CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|---|----------------------------------|--------------------------|
| <i>Contractor/Bidder Firm Name (Printed)</i> | | <i>Federal ID Number</i> |
| <i>By (Authorized Signature)</i> | | |
| <i>Printed Name and Title of Person Signing</i> | | |
| <i>Date Executed</i> | <i>Executed in the County of</i> | |

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

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CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.
6. SWEATFREE CODE OF CONDUCT:
 - a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.
7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

3. GTC 610

DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. FID may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the FID, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: FID agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. FID agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. FID agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, FID agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: FID agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by FID in the performance of this Agreement.
6. DISPUTES: FID shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the FID fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the FID under this Agreement and the balance, if any, shall be paid to the FID upon demand.
8. INDEPENDENT CONTRACTOR: FID, and the agents and employees of FID, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The FID shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, FID and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave.

FID, its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. FID, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. FID, its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

FID shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid FID, as provided herein, shall be in compensation for all of FID's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The FID by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the FID shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the FID acknowledges in accordance with Public Contract Code 7110, that:

a. The FID recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The FID, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the FID shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then FID must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract FID made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

7 Kinder Morgan Energy Partners, L.P. Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

Kinder Morgan

DRAFT

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List of Appendices

Appendix 1: Design-Build Procedures

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Appendix 2: ARRA and Authority Provisions Special Terms and Conditions

1. **AMENDMENT (CHANGE IN TERMS)**

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

1. **TERMINATION**

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

2. **EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT**

General Conditions

- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

3. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

4. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

5. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

6. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

7. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

8. RETENTION OF RECORD/AUDITS

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

9. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.



- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

10. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

11. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

12. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or



for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.

- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

13. CONFIDENTIALITY OF DATA

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

14. STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

15. DEBARMENT AND SUSPENSION CERTIFICATION

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:



- iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

16. CONFLICT OF INTEREST

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
 - b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
 - c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
 - d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.
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HSR13-06 - EXECUTION VERSION



Appendix 3: Stakeholder Collaboration
Appendix D: Third Party Special Conditions

HSR13-06 - EXECUTION VERSION



| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Agreement" or "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and Kinder Morgan, Energy Partners, L.P., whose principal mailing address is 500 Dallas Street, Suite 100, Houston, Texas 77002, hereinafter referred to as the "Facility Owner".

RECITALS

WHEREAS, the Facility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Facility Owner's Facilities; and

WHEREAS, the HST Project will be built in multiple phases; and

WHEREAS, the Authority and the Facility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Facility Owner's Facilities throughout the various phases of the HST Project.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Facility Owner agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work, as defined herein, other than any Excluded Entity.



1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

“Betterment” shall mean any upgrading of a replacement Facility that is not attributable to the construction of the HST Project and is made solely for the benefit of and at the election of the Facility Owner, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

- A. Any upgrading necessary for safe and effective construction of the HST Project;
- B. Replacement devices or materials that meet equivalent standards although they are not identical;
- C. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- D. Any upgrading required by applicable laws;
- E. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
- F. Any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Facility Owner at its own expenses, which are in effect as of the date of execution of the applicable Task Order.

1.4 Days

“Days” means calendar days, unless otherwise stated.

1.5 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.



1.6 Facility

“Facility” or “Facilities” means any Utility, as defined herein, and/or or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.7 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Built, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

1.8 Final Acceptance

“Final Acceptance” means when all of the requirements as set forth in the applicable Task Order have been satisfied.

1.9 Final Acceptance Deadline

“Final Acceptance Deadline” means the date agreed to by the Authority’s Contractor, Authority and the Facility Owner in the applicable Task Order for Final Acceptance.

1.10 Hazardous Material

“Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.11 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any



portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by notice to owner or otherwise) by an Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.

1.12 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.13 Party

“Party” refers to the Authority or the Facility Owner, as the context may require and “Parties” means the Authority and the Facility Owner, collectively.

1.14 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Facility Owner’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.15 Right-of-way of Facility Owner

“Right-of-way of Facility Owner” means a property right held by the Facility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Facility Owner for the Facility to be located in a defined area of real property, including but not limited to a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Facility Owner does not include a franchise or license.

1.16 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Facility Owner’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.



1.17 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Facility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.18 Unforeseen Work

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.19 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.20 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.21 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.



2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility's Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority's Contractor and the Facility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority's Contractor. The Task Order will set forth among other things, the arrangements between the parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the Facility Work. Format of the Task Order and its content shall be mutually agreed upon by the Authority, the Authority's Contractor, and the Facility Owner.

2.3 Betterment Work at the Facility Owner's Request

Any work considered Betterment made at the Facility Owner's request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs to the Facility Owner.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Facility Owner shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by applicable law, including, without limitation, statute, superior rights, or prescriptive rights, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Facility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Facility Owner's Facility is located.



3.2 Authority's Expense

Unless the Facility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights the costs for such work shall be borne by the Authority.

3.3 Facility Owner's Expense

Facility Work will be performed at the Facility Owner's expense where:

- A. Facility Work is a Betterment as defined in Section 1.3;
- B. The Facility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Facility Owner; or
- D. The Facility Owner agrees to perform the work at its own expense.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Facility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Disputed Cost Liability

In circumstances where a dispute exists between the Parties as to whether the Facility Owner has a Prior Right to maintain and operate its facilities in their present location and which Party must bear the expense of Facility Work required for a Relocation pursuant to a Task Order, the Parties agree to proceed with the Facility Work required by the Task Order and to reserve the issue of liability for the cost of the Facility Work detailed in the Task Order as hereinafter provided. In such case, the Authority, either directly or through Authority's Contractor, shall advance funds for the cost of the Facility Work as if such costs were Authority's expense as provided in Section 3.2, of this Cooperative Agreement,

Authority and Facility Owner agree that after execution of the Task Order for Facility Work where cost liability is disputed, they shall negotiate in good faith with the goal of reaching an agreement as to the allocation of costs for the Facility Work. If Facility Owner fails to negotiate in good faith, or if no agreement is executed and delivered on or before ten (10) days after the date of completion of the Facility Work, then notwithstanding the disputes resolution process set forth in Section 3.7 of this Cooperative Agreement, Authority shall have the immediate right to pursue a determination of the cost responsibility through either mandatory binding arbitration (pursuant to the arbitration process set forth in Section 3.7) or through litigation in a



court of competent jurisdiction, in Authority's sole discretion. It is further agreed by Facility Owner and Authority that in case of disputed liability, (a) neither the advance or return of funds pursuant to this Cooperative Agreement nor the performance by Facility Owner of the Facility Work shall be deemed a waiver, compromise or admission of liability, (b) the fact that such advance and/or return of funds and performance of Facility Work occur shall not be pertinent to and shall not be considered or offered as evidence regarding the issue of liability, (c) the issue of liability shall be reserved for resolution by subsequent agreement, arbitration or litigation, and (d) the time for commencing an action for the recovery of any funds advanced by Authority for the cost of the Facility Work shall begin to run as of the tenth day after completion of the Facility Work, and Facility Owner waives any applicable statute of limitation to the contrary to the extent permitted by law.

In the event that Facility Owner ultimately is determined to be responsible for the Relocation costs, then Facility Owner shall within 45 days from the date of such determination reimburse the Authority or the Authority's Contractor as directed by the Authority the full amount of all sums advanced that were determined to be the Facility Owner's cost responsibility, plus interest from the date advanced or disbursed by Authority and computed in accordance with Section 1268.350 of the Code of Civil Procedure.

3.6 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Facility Owner of the claim and the Facility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Facility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Facility Owner under this Agreement, the Authority may withhold reimbursement to the Facility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.7 Disputes

The Authority and the Facility Owner agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting Facility Owner's Facilities a hierarchy of individuals within each Party's organization to whom issues



may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the Facility Owner disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Facility Owner shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the Facility Owner may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the Facility Owner. Failure of the Authority to provide a written decision shall be deemed denial of Facility Owner's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority, 42 days from the Facility Owner's original written objection, the Facility Owner appeals such decision by written notice to the Authority.

In connection with any appeal of the Authority's decision, the Facility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of Facility Owner's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.



If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the Facility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the Facility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Facility Owner with respect to the disputed matter as a direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the Facility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the Facility Owner shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.

4 LIQUIDATED DAMAGES

4.1 Basis for Liquidated Damages

As the result of late completion of the Project, Authority will suffer financial damages which cannot be quantified as of the date of execution hereof. Therefore, the Facility Owner and Authority have agreed to a stipulated amount to be paid by the Facility Owner in the event the Facility Owner fails to achieve Final Acceptance by the Final Acceptance Deadline. The Parties intend for the Liquidated Damages set forth herein to constitute liquidated damages under California law. The Facility Owner acknowledges and agrees that the Liquidated Damages are intended to compensate Authority solely for the Facility Owner's failure to meet the Final Acceptance Deadline, and shall not excuse the Facility Owner from liability from any other breach of the Agreement requirements, including any failure of the Work to conform to applicable requirements. The fact that Authority has agreed to accept Liquidated Damages as compensation for its damages associated with a delay in meeting the Final Acceptance Deadline shall not preclude Authority from exercising its other rights and remedies available at law or in equity other than the right to collect compensation for other damages associated with such delay.

4.2 Reasonableness of Liquidated Damages

The Facility Owner acknowledges and agrees that the foregoing damages have been set based on an evaluation by the Authority of damages which it will incur in the event of late completion, including additional administrative costs. The Facility Owner and the Authority agree that the amount of such damages is impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Facility Owner's costs and to avoid later disputes over which items are properly chargeable to the



Facility Owner. It is understood and agreed by the Facility Owner that any Liquidated Damages payable in accordance with this Section are in the nature of liquidated damages and not a penalty and that such sums are not manifestly unreasonable under the circumstances existing as of the date of execution and delivery of the Agreement.

The Facility Owner acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

4.3 Waiver

Permitting or requiring Facility Owner to continue and finish the Work or any part thereof after the Final Acceptance Deadline shall not act as a waiver of Authority's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Authority.

In the event that the Facility Owner fails to achieve Final Acceptance by the Final Acceptance Deadline, Facility Owner agrees to pay Authority Liquidated Damages of

- : \$20,000/day (or any part thereof).

5 PERFORMANCE OF WORK

5.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Facility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

5.2 Facility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Facility Owner, the Facility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Facility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Facility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Facility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Facility Owner in completing Facility Work in



accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Facility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Facility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Facility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Facility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

5.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Facility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Facility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

5.4 Insurance

The Facility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Facility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Facility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:



- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:
 - 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions , be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 - 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Facility Owner and the Authority shall be transmitted directly by the insurer to the Facility Owner and the Authority. The Facility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controlled insurance program.



5.5 Stakeholder Collaboration

In signing this Agreement, the Facility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private Facility Owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the Facility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

Subject to the requirements of the Public Information Act and to the maximum extent permitted by law, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

6 PAYMENT FOR WORK

6.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility by the Facility Owner, the Authority shall be entitled to credits as follows:
 1. The amount of any Betterment to the utility Facility resulting from such relocation.



2. The salvage value of any materials or parts salvaged and retained by Facility Owner.
3. If a new utility Facility or portion thereof is constructed to accomplish such relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of FACILITY}}{\text{Normal expected Life}} \times \text{Original Cost}$$

- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Facility Owner.
- C. Eligible Facility Owner costs shall include only those authorized under Title 48 C.F.R. Part 31, subpart 31.2. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

6.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Facility Owner in the amounts as established for Facility Work performed by the Facility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Facility Owner may be delegated to the Authority's Contractor; in such circumstances, the Facility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor to make reimbursement payments to the Facility Owner.

Nevertheless, the Task Order shall provide that the Authority and the Authority's Contractor shall be jointly and severally liable for any payments required to be made to the Facility Owner under this Agreement or any Task Order, subject to Paragraph 3.6 of this agreement.

Any payment required to be made to the Facility Owner by the Authority's Contractor shall be made within 45 days of date of acceptance of invoice by the Authority's Contractor. The Authority's Contractor shall set up an escrow account on mutually agreed terms and with an a mutually acceptable third party ("Utility Escrow Account"), in the amount of \$150,000 ("Minimum Escrow Amount") for the benefit of the Facility Owner exclusively for the payment of required Relocation expenses. Any required payment due to the Facility Owner by the Authority's Contractor and not made within 45 days, related to a required Relocation expenses, shall be eligible for payment through Utility Escrow Account. If the Utility Escrow Account amount falls below the Minimum Escrow Amount, the Authority's Contractor shall add funds to the Utility Escrow Account within 5 working days to bring the balance of the Utility Escrow



Account up to the Minimum Escrow Amount. Utility Escrow Account may be closed after final acceptance of Relocations from the Facility Owner. If Facility Work is at the Facility Owner's expense and is performed by the Authority or the Authority's Contractor, the Facility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work plus appropriate amounts for Betterments, salvage and expired service life. At the Authority's written direction given in its sole discretion, the Authority's Contractor may be authorized to accept such payment from the Facility Owner; in such circumstances, the Facility Owner agrees to the Authority's Contractor collection of reimbursement directly from the Facility Owner.

6.3 Invoicing Procedures

Invoicing procedures will be mutually agreed upon by the Authority, the Authority's Contractor and the Utility Owner and set forth in Task Orders.

7 GENERAL CONDITIONS

7.1 Deactivated Facilities

The Facility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Facility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Facility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Facility Owner. In the event of a breach of this Agreement by the Facility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Facility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Facility Owner to use due care in its dealings with others. The Facility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Facility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information



requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.

- E. The Facility Owner shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Facility Owner and without any right of the Facility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Facility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Facility Owner's sole expense.
- F. Except as otherwise provided in this Section 6, the Facility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Facility Owner. Except as otherwise provided in this Section 6, the Facility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

7.2 Default

In the event that the Facility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Facility Owner may pursue a claim for damages suffered.



Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Facility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Facility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Facility Owner, the Authority will notify the Facility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Authority shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

7.3 Indemnification

Each Party shall hold harmless, indemnify and defend the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Facility Owner in the performance of services required under this Agreement, the Authority



will immediately forward the claim to the Facility Owner. The Facility Owner and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Facility Owner in the defense of the claim or to require the Facility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Facility Owner of a claim shall not release the Facility Owner from any of the requirements of this section.

The Facility Owner's obligation to defend and indemnify shall not be excused because of the Facility Owner's inability to evaluate liability or because the Facility Owner evaluates liability and determines the Facility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Facility Owner. The Facility Owner shall pay all costs and fees related to this obligation and its enforcement by the Authority. The Authority's delay in notifying the Facility Owner of a claim shall not release the Facility Owner of the above duty to defend.

7.4 Force Majeure

Neither the Facility Owner nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the Facility Owner by the Authority of the Authority's Contractor;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Facility Owner related entity

The foregoing events shall relieve a Party of liability only if the Party's failure to perform as a result of such event is beyond its control and not due to an act or omission of the Facility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,



- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Facility Owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Facility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Facility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Facility Owner related entity and not listed in the definition of Force Majeure above.

7.5 Facility Owner's Facility and Right-of-way

The Facility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Facility Owner.

Whenever the Facility Owner's affected Facilities are to be relocated from the existing Right-of-way of Facility Owner to a new location that falls outside such existing Right-of-way of Facility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Facility Owner, without charge to the Facility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Facility Owner for those rights previously held by the Facility Owner in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the Facility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the existing Right of Way of Facility Owner so vacated.

If the existing Right-of-way of Facility Owner includes fee title, the Authority shall acquire from the Facility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Facility Owner those



remaining property rights appropriate for the placement and operation of the Facility Owner's Facilities in the Right-of-way of Facility Owner.

Upon completion of Facility Work by the Authority, the Relocated Facilities shall become the property of the Facility Owner.

7.6 Applicability

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Facility Owner's Facilities to accommodate or permit construction of the HST Project.

Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Facility Owner or Excluded Entities with respect to Facilities pursuant to arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

7.7 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award to Authority's Contractor. Copies of the Authority policies and procedures will be provided to the Facility Owner as soon as practicable after they become available. To the extent otherwise allowable pursuant to Title 23 C.F.R. Part 645, Subpart A, the Authority shall pay for any incremental costs incurred by the Utility Owner as a result of the application of Authority's policies and procedures that would not have been incurred pursuant to this Agreement absent such policies and procedures. This Agreement cannot be modified except by an instrument, in writing, signed by the Party to be charged.

7.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

7.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

7.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand



delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Facility Owner shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to Facility Owner:

Facility Owner Name: _____

Person in Charge: _____

Address: _____

Facsimile Number _____

If to Authority:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

Facsimile Number _____

7.11 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

7.12 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Facility Owner and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Facility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.



- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the Facility Owner's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."
- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

7.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties. None of the rights, obligations or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Agreement to its successor or any entity acquiring all or substantially all of such party's assets.

7.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

7.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

7.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent



Task Orders.

7.17 Special Terms and Conditions

The provisions included in Appendix D, "SPECIAL TERMS AND CONDITIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions in connection with this Agreement and subsequent Task Orders. References in such Special Terms and conditions to "Contractor" shall be deemed to refer to Facility Owner. The Dispute provisions in Section C of the Special Terms and Conditions are superseded by the Dispute process in Section 3.6 of this Agreement.

7.18 Appendices

Appendices A, B, C and D to this Agreement are attached hereto and incorporated by reference herein. This Agreement and the Appendices are intended to be complementary and shall, to the extent reasonably feasible, be interpreted so as to give force and effect to all provisions. In case of conflict between the provisions of this Agreement and those set forth in the Appendices, or between the provisions of the Appendices, the provision with the most stringent standard applicable to the party to be charged shall take precedence.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

FACILITY OWNER:

Signature

Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review



Signature

Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title

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Appendix 1: Design-Build Procedures

17.PERFORMANCE OF THE FACILITY WORK BY FACILITY OWNER

The method of performance to be utilized in the design and construction of the Facility Work, as described below (“Method”), will be specified in the executed Task Order for the particular Facility Work contemplated.

The Facility Owner agrees to (a) the Authority’s delegation to the Authority’s Contractor, of the responsibility to reimburse the Facility Owner, and (b) the Authority’s Contractor’s collection of reimbursement directly from the Facility Owner’s having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work shall be in accord with the following Method:

The Facility Owner performs all design and construction services for Facility Work.

A. At such time as the Authority’s Contractor has Project plans prepared to a level where the impact on the Facility Owner’s Facilities and the nature and extent of necessary Facility Work can be determined, Authority’s Contractor shall provide a copy of such plans to Facility Owner. Facility Owner shall develop plans for the required Facility Work (hereinafter referred to as “Facility Plans” and provide a copy of the Facility Plans to the Authority and the Authority’s Contractor within the time for initial delivery of the Facility Plans set forth in the Task Order.

B. The Authority and the Authority’s Contractor shall have fifteen (15) working days from receipt of the Facility Plans to review them, and provide comments to the Facility Owner.

C. The Facility Owner shall provide plans and specifications at the 30%, 60% and 90% development phase and/or any other agreed upon development milestones set forth in the Task Order for review and comment by Authority and Authority’s Contractor.

D. At such time as the Facility Owner has prepared final Facility Plans, including Facility Work and a detailed project schedule, the Facility Owner will provide a copy thereof to the Authority and the Authority’s Contractor. The final Facility Plans shall incorporate the comments of the Authority and the Authority’s Contractor. If any portion of Facility Work is at the Authority’s expense, the Facility Owner shall also prepare an itemized cost estimate for Facility Work.

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- E. In the event that the Authority finds any deficiencies in the schedule and estimate, the Authority will notify the Facility Owner in writing of the deficiencies and the Facility Owner will correct the deficiencies and return corrected documents within the time stated in the notice.
- F. After the Authority receives corrected schedule and estimate, the Authority will issue a Task Order to the Facility Owner which authorizes Facility Work to proceed.
- G. The Authority or the Authority's Contractor shall have fifteen (15) working days from receipt of the final Facility Plans to review them and provide final comments to the Facility Owner.
- H. The Facility Owner shall make final corrections to the Facility Plans and provide a copy to the Authority and the Authority's Contractor.
- I. The Facility Owner shall perform Facility Work in accordance with the Authority's Contractor's schedule. Time shall be of the essence in complying with the total time shown by the schedule for Facility Work as well as any and all interim time frames specified therein. The Facility Work shall be performed in a manner and using such methods so as to not cause a delay to the Authority and the Authority's Contractor in the prosecution of the HST. The Facility Owner shall be responsible for all costs incurred as a result of any delay to the Authority and the Authority's Contractor, including any Liquidated Damages.
- J. All Facility Work shall be performed by the Facility Owner's own forces. The Facility Owner shall be responsible for obtaining any and all permits that may be necessary to perform Facility Work unless otherwise specifically agreed to in writing. The Authority's Contractor will have full authority over the HST Project, and the Facility Owner shall be responsible for coordinating all aspects of Facility Work and cooperating with the Authority and the Authority's Contractor. In so doing, the Facility Owner shall make such adjustments and changes in the schedule as are necessary to coordinate with the Contractor's schedule. Such adjustments and changes shall be reflected in a written directive from the Authority's Contractor that shall be automatically incorporated in and become a part of the Task Order.
- K. Deviations from the final Facility Plan initiated by the Authority, the Authority's Contractor or the Facility Owner, must be agreed upon by all Parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.
- L. The Authority's Contractor shall be entitled to have representatives on the site of the HST Project to verify that Facility Work is being performed on schedule and coordinated by the Facility Owner.



M. Upon completion of Facility Work, the Facility Owner agrees to accept ownership and maintenance of the constructed Facilities.

N. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.

O. The Facility Owner shall provide the Authority and the Authority's Contractor with as-built drawings of Facility Work. that it performs. The as built drawings shall be in the format provided for in the Task Order for that particular Facility Work.

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Appendix 2: ARRA and Authority Provisions

- FEDERAL REQUIREMENTS FOR CONTRACTS USING ARRA FUNDS
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Facility Owner.

“State” includes Authority.

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FEDERAL REQUIREMENTS FOR CONTRACTS USING ARRA FUNDS

The Contractor understands that the Authority has received Federal funding from FRA for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the Project. The Contractor shall ensure compliance by its Subcontractors and include appropriate flow down provisions in each of its lower-tier Subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

Notwithstanding anything to the contrary contained in the Contract Documents, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract Documents. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.

1. COMPLIANCE WITH FEDERAL REQUIREMENTS:

The Contractor's failure to comply with Federal Requirements shall constitute a breach of this Agreement.

2. FEDERAL STANDARDS:

The Facility Owner agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.

3. ARRA FUNDED PROJECT:

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.



4. ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

5. PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

6. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432, section 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. For more information on FRA's Buy America requirements and processes please see FRA's Answers to Frequently Ask Questions (FAQ) available at, <http://www.fra.dot.gov/Page/P0391>.

7. WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1606, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

8. INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514, and 1515, the Contractor agrees that it shall permit the State of California, the Secretary and the Comptroller General of the United States



Comptroller General, their representatives, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to perform the following:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

The Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA-funded work.

9. WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

10.FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a



criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

11.REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- b. The total amount of ARRA funds received by Contractor during the Reporting Period;
- c. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- d. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- e. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - v. The Program source
 - vi. An award title descriptive of the purpose of each funding action;
 - vii. The location of the entity receiving the contract;
 - viii. The primary location of the contract, including the city, state, congressional district and county;



- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- f. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).

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GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or



corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section



7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11.CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12.TIMELINESS:

Time is of the essence in this Agreement.

13.COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14.GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15.ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.



- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16.CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to



the New Hire Registry maintained by the California Employment Development Department.

17.UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18.PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19.SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20.LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)



SPECIAL TERMS AND CONDITIONS

21. AMENDMENT (CHANGE IN TERMS)

- c. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- d. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

22. TERMINATION

This section regarding termination is in addition to GTC 610.

- c. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- d. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

23. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions

- c. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- d. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

24. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

25. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

26. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

27. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 9 below.

28. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

29. RETENTION OF RECORD/AUDITS

- c. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

30. AUDIT REVIEW PROCEDURES

- d. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.



- e. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- f. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

31. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

32. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

33. OWNERSHIP OF DATA

- e. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- f. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- g. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or



for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.

- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

34. CONFIDENTIALITY OF DATA

- f. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- g. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- h. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- i. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- j. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

35. STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

36. DEBARMENT AND SUSPENSION CERTIFICATION

- c. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:



- iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- d. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

37.CONFLICT OF INTEREST

- e. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- f. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- g. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

b.



Appendix 3: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

“Issues Resolution Ladder” (IRL) – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

“Stakeholder Implementation Plan” (SIP) – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.

“Stakeholder Charter” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.



2. STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.



Appendix D: Third Party Special Conditions

In the interest of public safety and for pipeline protection the following provisions must be considered in the design, construction planning and subsequent improvements near KM facilities.

- Adherence to applicable provisions enumerated in the enclosed copy of (a) L-OM200-29 "Guidelines for Design and Construction" relating to proposed projects affecting Kinder Morgan pipelines and (b) copy of Information Bulletin #03-001, issued from the office of the California State Fire Marshal concerning encroachments within and adjacent to pipeline easement.
- Exact pipeline location and depth can only be determined by pothole, which must be performed by hand excavation in the presence of a KM representative. Notify KM Area Manager, Mr. Mike McWhorter (559) 493-2975 at least two weeks prior to commencement of work. Mr. McWhorter will arrange for a pipeline representative to be present during work near the pipeline.
- All potholes must be performed by hand excavation and in the presence of a KM pipeline representative. Backfill around the pipeline must be sand (or rock free dirt) and must be hand-compacted. Labor and equipment for potholes must be provided by the contractor.
- The Contractor shall pothole the pipeline at the lesser of 50 feet intervals, proposed utility crossings, or at locations determined by KM's on-site pipeline representative to potentially conflict with the KM pipelines. The purpose of this work is to determine if the pipeline has sufficient cover and horizontal clearance to accommodate the construction work.
- An executed inspection agreement must be in place prior to commencement of work within 10 feet of the pipeline during and subsequent to this project. KM must hire qualified outside contract inspectors to perform this service. The inspection cost is based on \$600 per day plus 19.4% for G&A overhead multiplied by the number of days estimated that work will be performed near the pipelines. Due to the magnitude of this project and the aggressive schedule, I recommend 3 dedicated inspectors be hired to coordinate the contractor's activities. The estimated cost for a 30 month period of performance would be approximately \$1,125,000.
- Protection: The contractor will be required to protect the line from overhead work, heavy equipment crossings and other similar hazards. Common methods are providing additional cover over the pipeline or placing steel plates over the pipeline. The cost of the protection measures will be borne by the contractor.
- Relocation: This is when the Kinder Morgan pipeline must be moved due to the project design. In this project structures and storm drains are most likely to initiate a relocation. Water line elevations can generally be adjusted to avoid KM assets. The Hybrid Alignment of the HST will cross Kinder Morgans LS 119A just north of Malagra Road.
- Line Interruptions: The successful bidder must plan for minimal interruption of pipeline activities. Any shutdown for relocation tie-in or construction work in close proximity must be planned 60 days in advance. Planned shutdowns are limited to 24 hours.





Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

Name of Company: _____

The list of design, construction and contractor requirements, including but not limited to the following, for the design and installation of foreign utilities or improvements on KM right-of-way (ROW) are not intended nor do they waive or modify any rights KM may have under existing easements or ROW agreements. Reference existing easements and amendments for additional requirements. This list of requirements is applicable for KM facilities on easements only. Encroachments on fee property should be referred to the ROW Department.

Design

- KM shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KM's ROW to determine and resolve any location, grade or encroachment problems and provide protection of our facilities and the public **before** the actual work is to take place.
- Encroaching entity shall provide KM with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KM's ROW. The encroaching entity shall also provide a set of as-built drawings showing the proposed facilities in the vicinity of KM's ROW.
- Only facilities shown on drawings reviewed by _____ (Company) will be approved for installation on KM's ROW. All drawing revisions that effect facilities proposed to be placed on KM's ROW must be approved by KM in writing.
- KM shall approve the design of all permanent road crossings.
- Any repair to surface facilities following future pipeline maintenance or repair work by KM will be at the expense of the developer or landowner.
- The depth of cover over the KM pipelines shall not be reduced nor drainage altered without KM's written approval.
- Construction of any permanent structure, building(s) or obstructions within KM pipeline easement is **not** permitted.
- Planting of shrubs and trees is not permitted on KM pipeline easement.
- Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KM easement.
- Foreign line, gas, water, electric and sewer lines, etc., may cross perpendicular to KM's pipeline within the ROW, provided that a minimum of two (2) feet of vertical clearance is maintained between KM pipeline(s) and the foreign pipeline. Constant line elevations must be maintained across KM's entire ROW width, gravity drain lines are the only exception. Foreign line crossings below the KM pipeline must be evaluated by KM to ensure that a significant length of the KM line is not exposed and unsupported during construction. When installing underground utilities, the last line should be placed beneath all existing lines unless it is impractical or unreasonable to do so. Foreign line crossings above the KM pipeline with less than 2 feet of clearance must be evaluated by KM to ensure that additional support is not necessary to prevent settling on top of the KM hazardous liquids pipeline.
- A foreign pipeline shall cross KM facilities at as near a ninety-degree angle as possible. A foreign pipeline shall not run parallel to KM pipeline within KM easement without written permission of KM.
- The foreign utility should be advised that KM maintains cathodic protection on their pipelines. The foreign utility must coordinate their cathodic protection system with KM's. At the request of KM, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection. The KM Cathodic Protection (CP) technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KM. All costs associated with the correction of cathodic protection problems on KM pipeline as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The metallic foreign line shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing unless otherwise requested by the KM CP Technician.





Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- AC Electrical lines must be installed in conduit and properly insulated.
- DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KM ROW.
- No power poles, light standards, etc. shall be installed on KM easement
- No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble.

Construction

- Contractors shall be advised of KM's requirements and be contractually obligated to comply.
- The continued integrity of KM's pipelines and the safety of all individuals in the area of proposed work near KM's facilities are of the utmost importance. Therefore, contractor must meet with KM representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KM's on-site representative will require discontinuation of any work that, in his opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- The Contractor must expose all KM pipelines prior to crossing to determine the exact alignment and depth of the lines. A KM representative must be present. In the event of parallel lines, only one pipeline can be exposed at a time.
- KM will not allow pipelines to remain exposed overnight without consent of KM designated representative. Contractor may be required to backfill pipelines at the end of each day.
- A KM representative shall do all line locating. A KM representative shall be present for hydraulic excavation. The use of probing rods for pipeline locating shall be performed by KM representatives only, to prevent unnecessary damage to the pipeline coating.
- Notification shall be given to KM at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of Kinder Morgan, Inc.'s work site representative. Any Contractor schedule changes shall be provided to Kinder Morgan, Inc. immediately.
- Heavy equipment will not be allowed to operate directly over KM pipelines or in KM ROW unless written approval is obtained from (Company). Heavy equipment shall only be allowed to cross KM pipelines at locations designated by Kinder Morgan, Inc. Contractor shall comply with all precautionary measures required by KM to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires. ~~Equipment excavating within ten (10) feet of KM Pipelines will have a plate guard installed over the teeth to protect the pipeline.~~
- Excavating or grading which might result in erosion or which could render the KM ROW inaccessible shall not be permitted unless the contractor/developer/owner agrees to restore the area to its original condition and provide protection to KM's facility.
- A KM representative shall be on-site to observe any construction activities within ten (10) feet of a KM pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a KM representative being on site. Only hand excavation shall be permitted within **two (2) feet** of KM pipelines, valves and fittings unless State requirements are more stringent. However, proceed with extreme caution when within three (3) feet of the pipe.
- A KM representative will monitor construction activity within 25 feet of KM facilities during and after the activities to verify the integrity of the pipeline and to ensure the scope and conditions agreed to have not changed. Monitoring means to conduct site inspections on a pre-determined frequency based on items such as: scope of work, duration of expected excavator work, type of equipment, potential impact on pipeline, complexity of work and/or number of excavators involved.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KM facility unless company representative is present.
- Temporary support of any exposed KM pipeline by Contractor may be necessary if required by KM's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KM's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KM's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.





Guidelines for Design and Construction near Kinder Morgan Hazardous Liquid Operated Facilities

- No blasting shall be allowed within 1000 feet of KM's facilities unless blasting notification is given to KM including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting. KM shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KM's facilities as a result of their activities whether or not KM representatives are present. KM shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 300 feet of KM's facilities unless blasting notification is given to KM a minimum of one week before blasting. *(note: covered above)* KM shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KM in addition to meeting requirements for 500' and 1000' being met above. A written emergency plan shall be provided by the organization responsible for blasting. *(note: covered above)*

- Any** contact with any KM facility, pipeline, valve set, etc. shall be reported immediately to KM. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- KM personnel shall install all test leads on KM facilities.
- Burning of trash, brush, etc. is not permitted within the KM ROW.

Insurance Requirements

- All contractors, and their subcontractors, working on Company easements shall maintain the following types of insurance policies and minimum limits of coverage. All insurance certificates carried by Contractor and Grantee shall include the following statement: "Kinder Morgan and its affiliated or subsidiary companies are named as additional insured on all above policies (except Worker's Compensation) and waiver of subrogation in favor of Kinder Morgan and its affiliated or subsidiary companies, their respective directors, officers, agents and employees applies as required by written contract." **Contractor shall furnish Certificates of Insurance evidencing insurance coverage prior to commencement of work and shall provide thirty (30) days notice prior to the termination or cancellation of any policy.**
- Statutory Coverage Workers' Compensation Insurance in accordance with the laws of the states where the work is to be performed. If Contractor performs work on the adjacent on navigable waterways Contractor shall furnish a certificate of insurance showing compliance with the provisions of the Federal Longshoreman's and Harbor Workers' Compensation Law.
 - Employer's Liability Insurance, with limits of not less than **\$1,000,000** per occurrence and **\$1,000,000** disease each employee.
 - Commercial General Liability Insurance with a combined single limit of not less than **\$2,000,000** per occurrence and in the aggregate. All policies shall include coverage for blanket contractual liability assumed.
 - Comprehensive Automobile Liability Insurance with a combined single limit of not less than **\$1,000,000**. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 - If necessary Comprehensive Aircraft Liability Insurance with combined bodily injury, including passengers, and property damage liability single limits of not less than **\$5,000,000** each occurrence.
 - Contractor's Pollution Liability Insurance this coverage shall be maintained in force for the full period of this agreement with available limits of not less than **\$2,000,000** per occurrence.
 - Pollution Legal Liability Insurance this coverage must be maintained in a minimum amount of **\$5,000,000** per occurrence.





INFORMATION BULLETIN
#03-001

Date Issued: June 20, 2003

SUBJECT: ENCROACHMENTS INTO OR ON PIPELINE EASEMENTS

The purpose of this informational bulletin is to delineate the position of the State Fire Marshal regarding encroachments onto the pipeline easements.

Section 51014.6 of the California Government Code states, “ (a) Effective January 1, 1987, no person, other than the pipeline operator, shall do any of the following with respect to any pipeline easement: (1) Build, erect, or create a structure or improvement within the pipeline easement or permit the building, erection, or creation thereof. (2) Build, erect, or create a structure, fence, wall, or obstruction adjacent to any pipeline easement which would prevent complete and unimpaired surface access to the easement, or permit the building, erection, or creation thereof. (b) No shrubbery or shielding shall be installed on the pipeline easement which would impair aerial observation of the pipeline easement. This subdivision does not prevent the revegetation of any landscape disturbed within a pipeline easement as a result of construction the pipeline and does not prevent the holder of the underlying fee interest or the holder’s tenant from planting and harvesting seasonal agricultural crops on a pipeline easement. (c) This section does not prohibit a pipeline operator from performing any necessary activities within a pipeline easement, including, but not limited to, the construction, replacement, relocation, repair, or operation of the pipeline.

It is the position of the State Fire Marshal that nothing shall encroach into or upon the pipeline easement, which would impede the pipeline operator from complete and unobstructed surface access along the pipeline right of way. Nor shall there be any obstructions, which would shield the pipeline right of way from observation. In the interest of public safety and the protection of the environment, it is imperative that the pipeline operator visually assesses the conditions along the easement to ensure the integrity of the pipeline.

It is the responsibility of the pipeline operator to ensure they have unimpeded surface access and to be able to physically observe all portions of their pipeline rights of way. In cases where this is not possible, the pipeline operator shall inform the State Fire Marshal. The State Fire Marshal shall in conjunction with the pipeline operator resolve the issue.

Questions regarding the issue of pipeline encroachment can be addressed to:

Bob Gorham, Chief

CALFIRE/State Fire Marshal
Pipeline Safety Division
3950 Paramount Blvd. Suite 210
Lakewood, CA 90712

(562) 497-9100
(562) 497-9104 (fax)
bob.gorham@fire.ca.gov



8 Level 3 Communications, LLC Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

Level 3 Communications, LLC

HSR13-06 - EXECUTION VERSION



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|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and

Level 3 Communications, LLC
 a Delaware Limited Liability Corporation whose principal mailing address is
 1025 Eldorado Boulevard, Broomfield, CO 80021
 hereinafter referred to as the "Utility Owner".

RECITALS

WHEREAS, the Utility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission and are located on a public road or publicly owned rail corridor; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Utility Owner's Facilities; and

WHEREAS, the Authority and the Utility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Utility Owner's Facilities.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Utility Owner agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person, other than an agency of the State of California or a municipality, that enters into a contract with the Authority for the performance of Facility Work, as defined herein.



1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

“Betterment” means the difference in cost between the intended relocation of the Utility Owner’s Facilities as proposed and submitted by the Utility owner and the cost of any upgrades to the Facility not attributable to the HST Project and made solely for the benefit and at the election of the Utility owner.

Betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable Facilities constructed by or for the Utility Owner at its own expense, which are in effect as of the date of execution of the Task Order.

1.4 Days

“Days” means calendar days, unless otherwise stated.

1.5 Facility

“Facility” or “Facilities” means any Utility, as defined herein, or any publicly owned and operated road, street, bridge, or grade separation.

1.6 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction of the HST Project associated with Relocation of Utilities.



1.7 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.8 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by a Notice to Owner or otherwise) by another agency of the State of California or a municipality is specifically excluded from the definition of HST Project.

1.9 Notice to Proceed

"Notice to Proceed" means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.10 Party

"Party" refers to the Authority or the Utility Owner, as the context may require and "Parties" means the Authority and the Utility Owner, collectively.

1.11 Relocation

"Relocation" means alteration, removal, relocation, replacement, reconstruction, support, protection, including provision of temporary facilities as necessary, of any and all of the Utility Owner's Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.12 Right-of-way of Utility Owner

"Right-of-way of Utility Owner" means a property right held by the Utility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Utility Owner for the Facility to be located in a defined area of real property, or a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement.

1.13 Service Line

"Service Line" means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial



warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Utility Owner's Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

1.14 Task Order

"Task Order" means a work order or agreement among the Authority, the Authority's Contractor, and the Utility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.15 Unforeseen Work

"Unforeseen Work" means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.16 Utility

"Utility" means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term "Utility" or "utility" specifically excludes (a) storm water facilities that provide drainage solely for the HST Project right-of-way, and (b) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.17 Utility Owner G&A Costs

"Utility Owner G&A Costs" means general and administrative costs incurred by the Utility Owner for staff time expended to perform tasks and obligations necessary to effectuate the



Relocation of a Facility, including, without limitation, the exchange and review of documentation; attendance at meetings, whether internal or with the other Party or other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts or other affected third parties; procurement of and coordination with Contractors; coordination and interfacing of Utility Owner's Relocation schedule with the Authority's design and construction schedules; cooperation with one another's staff or contractors or with other Project stakeholders (including other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts); preparation, negotiation, and execution of Task Orders and Task Order exhibits; review of legal descriptions of property affected by any Relocation; review and acceptance of Relocation plans; acceptance of construction of Relocation, and connecting the Relocated Utility to Utility Owner's network; provided that Utility Owner G&A Costs shall be 30% of the construction cost for the relevant Relocation where the Utility Owner is the party responsible for performance of such Relocation and shall be 10% of the construction cost for the relevant Relocation where the Authority is the party responsible for performance of such Relocation, in each case calculated by multiplying the applicable percentage by the estimated lump sum or not to exceed estimated costs of the construction of Relocation shown on the Utility Owner's cost estimate attached to the executed Task Order.

1.18 Wasted Work

"Wasted Work" means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority's cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.19 Working Days

"Working Days" means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility's Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority's Contractor and the Utility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority's Contractor.



2.3 Betterment Work at the Utility Owner's Request

Any work considered Betterment made at the Utility Owner's request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose in connection with. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Utility Owner shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by statute, superior rights, prescriptive rights or by permit, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Utility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Utility Owner's Facility is located.

3.2 Authority's Expense

Unless the Utility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights that the costs for such work shall be borne by the Authority.

3.3 Utility Owner's Expense

Facility Work will be performed at the Utility Owner's expense where:

- A. Facility Work is mutually determined herein to be a Betterment as defined in Section 1.3;
- B. The Utility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Utility Owner; or
- D. The Utility Owner agrees hereto.



3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Utility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Utility Owner of the claim and the Utility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Utility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Utility Owner under this Agreement, the Authority may withhold reimbursement to the Utility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.6 Disputes

The Authority and the Utility Owner agree that, as a general principle, the Parties shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the Utility Owner disagrees with a determination or matter made by the Authority, the Utility Owner shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the Parties shall attempt to resolve such dispute through the partnering process, which may include escalation with the Authority at the Authority's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the Utility Owner shall request a written statement of the Authority concerning its decision. The Authority shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Utility Owner. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the Utility Owner mails or otherwise furnishes a written appeal addressed to the Authority. The Authority shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In connection with any appeal of the Authority's decision, the Utility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the Utility Owner shall continue with or permit the



continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of the Agreement, direction to the Utility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under the Agreement, the Utility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Utility Owner with respect to the disputed matter (crediting the Authority for any corresponding reduction in the Utility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Utility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Utility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Utility Owner, the Utility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or



- B. Cause the work to be performed by a contractor, employed by Utility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest, responsive, and qualified bidder within the Utility Owner approved vendor list, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Utility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Utility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Utility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Utility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Utility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Utility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Utility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Utility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Utility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.



4.4 Insurance

The Utility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Utility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Utility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by contractor hereunder shall contain or be endorsed to contain the following provisions:
 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).



Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Utility Owner and the Authority shall be transmitted directly by the insurer to the Utility Owner and the Authority. The Utility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controller insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Utility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," included herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

UTILITY OWNER shall be reimbursed for the cost of participation in the initial workshop and subsequent stakeholder meetings. Reimbursement to the Utility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made, at the Authority's discretion by either the Authority or the Authority's Contractor.

Subject to the requirements of the Public Information Act, no statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with Utility Owner G&A Costs, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:



- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility, the Authority shall be entitled to credits for the amount of any betterment to the utility Facility resulting from such relocation.
- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Utility Owner.
- C. Eligible Utility Owner costs shall exclude those prohibited under Title 23 C.F.R. Part 645, Subpart A. Utility Owner agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Utility Owner in the amounts as established for Facility Work performed by the Utility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Utility Owner may be delegated to the Authority's Contractor; in such circumstances, the Utility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor the responsibility to make reimbursement payments to the Utility Owner; provided, however, that if Authority's Contractor fails to timely make any required payments, responsibility for such payments will be remanded to Authority.

If Facility Work is at the Utility Owner's expense and is performed by the Authority or the Authority's Contractor, the Utility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work less the credits as determined. At the Authority's discretion, the Authority's Contractor is authorized to accept such payment from the Utility Owner; in such circumstances, the Utility Owner agrees to the Authority's Contractor collection of reimbursement directly from Utility Owner; provided, however, that if Utility Owner fails to timely make any required payments, responsibility for such collection will be remanded to Authority.

5.3 Invoicing Procedures

The Utility Owner will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

With the exception of empty conduit, the Utility Owner's Facilities shall not remain in the



Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Utility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Utility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Utility Owner. In the event of a breach of this Agreement by the Utility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Utility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Utility Owner to use due care in its dealings with others. The Utility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Utility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Utility Owner shall remove the Deactivated Facilities upon ninety (90) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Utility Owner and without any right of the Utility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Utility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Utility Owner's sole expense.
- F. Except as otherwise provided, the Utility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Utility Owner. The



Utility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way, except where such removal is eligible for reimbursement as provided above. . Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

- G. Where empty conduit abandoned within AUTHORITY's right of way requires removal in the future as provided for in Paragraph E, UTILITY OWNER shall be responsible for removing such conduit at AUTHORITY's expense.

6.2 Default

In the event that the Utility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by Law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the Utility Owner may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Utility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Utility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Utility Owner, the Authority will notify the Utility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such



continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Indemnification

Each Party shall hold harmless, and indemnify the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Utility Owner in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Utility Owner. The Utility Owner and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Utility Owner in the defense of the claim or to require the Utility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Utility Owner of a claim shall not release the Utility Owner from any of the requirements of this section.

The Utility Owner's obligation to defend and indemnify shall not be excused because of the Utility Owner's inability to evaluate liability or because the Utility Owner evaluates liability and determines the Utility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Utility Owner. The Utility Owner shall pay all costs and fees related to this obligation and its enforcement by Authority, but shall be reimbursed a pro rata portion upon a final adjudication or judgment finding Authority negligent. The Authority's



delay in notifying the Utility Owner of a claim shall not release the Utility Owner of the above duty to defend.

6.4 Force Majeure

Neither the Utility Owner nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Utility Owner related entity.

Provided that it is beyond its control and not due to an act or omission of the Utility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Utility owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Utility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;



- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Utility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Utility Owner related entity and not listed in the definition of Force Majeure above.

The Force Majeure exclusions above, do not apply when the Utility Owner is responsible for performing Facility Work.

6.5 Utility Owner's Facility and Right-of-way

The Utility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Utility Owner.

Whenever the Utility Owner's affected Facilities will remain within the Authority's right-of-way, the Authority and the Utility Owner shall jointly execute an agreement for common use of the subject area.

Whenever the Utility Owner's affected Facilities are to be relocated from the existing right-of-way of the Utility Owner to a new location that falls outside such existing right-of-way of the Utility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing right-of-way of the Utility Owner. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Utility Owner, without charge to the Utility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Utility Owner for those rights previously held by the Utility Owner in its existing right-of-way. In discharge of the Authority's obligations under this Paragraph, in the event that the new location falls within the right-of-way under the jurisdiction of the Authority, the Authority and the Utility Owner shall jointly execute an agreement for joint use. In consideration for these replacement rights being issued by the Authority, the Utility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the Utility Owner's existing right-of-way so vacated.

If the existing Right-of-way of Utility Owner includes fee title, the Authority shall acquire from the Utility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Utility Owner those remaining property rights appropriate for the placement and operation of the Utility Owner's Facilities in the Right-of-way of Utility Owner.

Upon completion of Facility Work by the Authority, the new Facilities shall become the property of the Utility Owner, and the Utility Owner shall have the same rights in the new



location that it had in the old location.

6.6 Applicability

This agreement applies to the Relocation of Utility Owner's Facilities to accommodate or permit construction of the HST Project. Another State Agency or Municipality may perform construction activities adjacent to the HST Project. Any Facility Work related to these construction activities is specifically excluded from the terms and conditions of this Cooperative Agreement.

6.7 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award; provided, however, that where the terms of the AUTHORITY'S general policies and procedures conflict with the specific terms of this Agreement, the terms of this Agreement shall apply.. Copies of the Authority policies and procedures will be provided to the Utility Owner as soon as practicable after they become available. The Authority shall pay for any damages suffered by or costs incurred by the Utility Owner for activities that may be required as a result of the Authority's policies and procedures. Such activities will be set forth in the Task Order specific to that Facility Work. This Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.

6.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Utility Owner shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the



following addresses:

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If to UTILITY OWNER:

Utility Owner Name: LEVEL 3 COMMUNICATIONS, LLC

Person in Charge: John Trujillo, Relocation Project Manager

Address: 1025 Eldorado Boulevard

Broomfield, CO 80021

with a copy to:

Utility Owner Name: LEVEL 3 COMMUNICATIONS, LLC

Person in Charge: Attn: General Counsel

Address: 1025 Eldorado Boulevard

Broomfield, CO 80021

If to AUTHORITY:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

6.11 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.12 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Utility Owner and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Utility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.



- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the Utility Owner's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."
- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

6.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Utility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first written.



UTILITY OWNER:

Signature

Date

Dan Neppel

Typed Name

Vice President, OSP Engineering and Construction Management

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title

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Appendix 1: Design-Build Procedures

1. INITIAL COORDINATION

- A. The Utility Owner shall advise the Authority in writing of the place and the name and telephone number of a contact person for the Utility Owner who has charge over the Facility Work and will serve as the primary contact for the Utility Owner on all related issues.
- B. The Authority will compile information from the Utility Owner that will illustrate the nature and locations of the Utility Owner's existing Facilities. The Authority will present this information on a series of drawings and tables that will be used to determine conflicts with the HST Project.
- C. The Utility Owner will furnish markups to the Authority of their existing and proposed Facilities within 20 working days.
- D. The Authority will prepare preliminary design plans that indicate which utilities are to be relocated and conceptual arrangements of the relocated utilities.
- E. The Utility Owner will verify, to the best of their ability, the correctness and completeness of the plans prepared by the Authority.
- F. These plans will form the basis of subsequent design to be performed by the Utility Owner, the Authority or the Authority's Contractor, as such; the Utility Owner shall take sole and full responsibility for the accuracy of their depicted Facilities.

2. PERFORMANCE OF THE FACILITY WORK

The Method of performance to be utilized in the design and construction of the Facility Work, as described below, will be specified in the executed Task Order for the particular Facility Work contemplated.

The Utility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Utility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Utility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work will be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work with the exception of disconnecting, pulling and terminating new wire/cable.

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- A. At such time as the Authority's Contractor has plans prepared to a level where the impact on the Utility Owner's Facilities and the nature and extent of the Facility Work can be determined, hereinafter referred to as "Facility Plans", the Authority's Contractor will provide a copy of the Facility Plans to the Utility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Utility Owner's standards.
- B. The Utility Owner shall have twenty (20) working days from receipt of the Facility Plans to review them and provide comments to the Authority's Contractor and the Authority. Failure to respond within the time period allowed shall be deemed as an approval.
- C. The Authority's Contractor shall provide plans and specifications at the 30%, 60% and 90% development phase and/or any other agreed upon development milestones by the Authority, the Authority's Contractor, and the Utility Owner for review and comments. Time for review shall not commence until said milestones have been accepted by the Utility Owner.
- D. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Utility Owner. The final Facility Plans shall incorporate the comments of the Utility Owner. Detailed list of final method of inclusion of the Utility Owner's comments shall be provided to the Utility Owner by the Authority's Contractor.
- E. The Utility Owner shall have twenty (20) work days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Utility Owner's comments are not fully addressed or incorporated, the Utility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- F. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Utility Owner. This section shall not apply until paragraph 2.E of **Error! Reference source not found.**A is satisfied.
- G. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans. Utility Owner shall install and terminate fiber optic cable within the Facility Work provided by the Authority's Contractor.
- H. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Utility Owner, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.



- I. The Utility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Utility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- J. Upon completion of the Facility Work, the Utility Owner agrees to accept ownership and maintenance of the constructed Facilities and receipt of as-built drawings in AUTOCAD as well as GIS if applicable.
- K. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- L. The Authority's Contractor shall provide the Utility Owner with as-built drawings of Facility Work. The as-built drawings shall be in AUTOCAD and PDF format as well as GIS if applicable for that particular Facility Work.

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Appendix 2: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Utility Owner only to the extent that the Utility Owner would be subject to these provisions. The Utility Owner is not a contractor.

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SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS**1. ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

3. PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

5. WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the



United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

6. INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

7. WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.



Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

8. FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

9. REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- a. The total amount of ARRA funds received by Contractor during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A Description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;



- v. The Program source
- vi. An award title descriptive of the purpose of each funding action;
- vii. The location of the entity receiving the contract;
- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.

5. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

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GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment; provided, however, that Utility Owner may assign the Agreement to an entity that is controlled by, controls, or is under common control with Utility Owner, or to any entity that succeeds to substantially all of the assets of Utility Owner.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this



Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement, except to the extent caused by the gross negligence or willful misconduct of the State, or any of its agents or representatives.

6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.



Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

11. TIMELINESS:

Time is of the essence in this Agreement.

12. COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

13. GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

14. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



15. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

16. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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Appendix 3: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

- A. **“Issues Resolution Ladder” (IRL)** – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. **“Stakeholder Implementation Plan” (SIP)** – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.
- C. **“Stakeholder Charter”** – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS



The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

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9 Madera County Master Agreement

ADDENDUM 9

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MCC #9644-C-2012

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|------------------------------|-----------------------------------|-----------------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | Madera MCC #9644-C-2012 | AUTHORITY Document No: | |

THIS AGREEMENT, entered into this ____ day of ____, 2012 (the "Agreement"), by and between the **California High Speed Rail Authority**, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "AUTHORITY", and *County of Madera*, a political subdivision of the State of California whose principal mailing address is 200 W Fourth St, Madera CA, 93637, hereinafter referred to as the "LOCAL AGENCY".

RECITALS

WHEREAS, LOCAL AGENCY owns, operates or maintains certain FACILITIES, as defined herein, in the State of California of which certain FACILITIES may be operated under regulations of the California Public Utilities Commission and are located on a public road or publicly owned rail corridor; and

WHEREAS, AUTHORITY is currently engaging in a program throughout the State of California under current provisions of Section 2704.04 of the Streets and Highways Code ("S&H Code") and Sections 185033 and 185036 of the Public Utilities Code, to construct a high-speed rail system for the State of California (the "SYSTEM"), by undertaking a number of "PROJECT(s)," as defined herein; and

WHEREAS, from time to time work on a PROJECT will occur in areas where LOCAL AGENCY's FACILITIES are located; and

WHEREAS, work on a PROJECT may require the location (vertically and/or horizontally), protection, relocation, installation, removal, or some combination thereof, of LOCAL AGENCY's FACILITIES; and

WHEREAS, AUTHORITY and LOCAL AGENCY desire to enter into an agreement which establishes the contractual terms and conditions applicable to the location, protection, relocation, installation, removal or some combination thereof, of LOCAL AGENCY's FACILITIES.

ACCORDINGLY, for and in consideration of the mutual promises set out herein, the adequacy of which are hereby acknowledged, AUTHORITY and LOCAL AGENCY hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings.

1.1 AUTHORITY

"AUTHORITY" means the California High Speed Rail Authority and its authorized representatives.

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1.2 AUTHORITY'S CONTRACTOR

"AUTHORITY'S CONTRACTOR" means the proposer who is awarded the design and construction of any of the PROJECT(s).

1.3 BETTERMENT

"BETTERMENT" means the cost of any upgrades to the FACILITIES not attributable to the AUTHORITY'S PROJECT(s) and made solely for the benefit, and at the election, of LOCAL AGENCY. As employed herein, for the sake of clarification, BETTERMENT does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirements or any upgrades required by the LOCAL AGENCY'S standard specifications, standards of practice and construction methods applied to comparable FACILITIES constructed by or for the LOCAL AGENCY at its own expense, that are in effect as of the date of execution of the specific TASK ORDER for that FACILITIES WORK.

1.4 CONSTRUCTION CONTRACT

"CONSTRUCTION CONTRACT" means the contract between the AUTHORITY and the AUTHORITY'S CONTRACTOR for construction (with or without design) of the PROJECT work that is impacting LOCAL AGENCY'S. All references herein to "the CONSTRUCTION CONTRACT" refer to the CONSTRUCTION CONTRACT(S) for the PROJECT(S) that impact the FACILITIES, and when used in reference to a particular FACILITY, refer to the CONSTRUCTION CONTRACT that impacts the referenced FACILITY.

1.5 FACILITY

"FACILITY" means a facility under the ownership or exclusive operation of LOCAL AGENCY, including but not limited to (a) any pole, poleline, pipe, pipeline, conduit, cable, aqueduct, or other structure used for public or privately owned utility services, and (b) any public streets, highways, bridges, retaining walls, alleys, parking lots, parks, public landscaping and trees, traffic control devices/systems, street lighting systems, and public police and fire alarm systems.

1.6 FACILITY WORK

"FACILITY WORK" means those activities related to the Relocation of a FACILITY that will be or remain the property of the LOCAL AGENCY.

1.7 HAZARDOUS MATERIAL

"HAZARDOUS MATERIAL" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

1.8 PARTIES

"PARTIES" refers to the AUTHORITY and LOCAL AGENCY, collectively.

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1.9 PRIOR RIGHTS

"PRIOR RIGHTS" means, superior rights, prescriptive rights (under court order) contractual rights, permit or common law, as applicable (collectively referred to as "PRIOR RIGHTS")

1.10 PROJECT

"PROJECT" means a segment of the System (as determined by AUTHORITY) and the work undertaken or contracted for by AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing rail facilities). All references herein to "the PROJECT" refer to the PROJECT(S) that impact the FACILITIES, and when used in reference to a particular FACILITY, refer to the PROJECT that impacts the referenced FACILITY.

1.11 RELOCATION

"RELOCATION" means removal, relocation, protection or any other rearrangement or modification of LOCAL AGENCY'S FACILITIES as ordered and approved by AUTHORITY to accommodate any of AUTHORITY's PROJECTS that may impact LOCAL AGENCY'S FACILITIES. RELOCATION shall include, but not be limited to preparation and submission of RELOCATION plans or drawings sufficiently engineered to allow construction of the ordered RELOCATION, and a detailed estimate by LOCAL AGENCY and/or AUTHORITY of the actual and necessary cost of the ordered RELOCATION including review and inspection, for approval by LOCAL AGENCY and AUTHORITY.

1.12 RIGHT OF WAY OF LOCAL AGENCY

"RIGHT OF WAY OF LOCAL AGENCY" means a property right held by LOCAL AGENCY in the form of either a fully executed deed in the usual form or other fully executed valid instrument, whether or not recorded, that conveys a permanent property right to LOCAL AGENCY for the FACILITIES to be located in a defined area of real property, or a defined area within a PROJECT's right of way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement.

1.13 TASK ORDER

"TASK ORDER" means a work order or other agreement executed by the AUTHORITY, the AUTHORITY's CONTRACTOR, and the LOCAL AGENCY detailing FACILITY WORK specific to a particular FACILITY's RELOCATION.

1.14 UNFORESEEN WORK

"UNFORESEEN WORK" means any new and/or extra work found essential to the satisfactory completion of the PROJECT(s) and not covered by any of the various TASK ORDERS.

1.15 WASTED WORK

"WASTED WORK" means design, design review, construction work or inspection performed by LOCAL AGENCY upon written direction from AUTHORITY, for a RELOCATION rendered useless or unnecessary as a result of AUTHORITY's

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cancellation and/or changes in the scope of work as agreed to by the PARTIES. This term includes any other design or construction work that is needed to accommodate the PROJECT and is subsequently rendered unnecessary.

2. WORK TO BE DONE

2.1 FACILITY WORK

In general, the FACILITY WORK will involve the RELOCATION of existing FACILITIES owned, operated, or maintained by the LOCAL AGENCY, or the construction of new FACILITIES (or any combination thereof) that will be and/or remain the property of LOCAL AGENCY, along with design, engineering, planning, inspection, permitting, testing, certifying and any miscellaneous related work. FACILITY WORK specific to a particular FACILITY'S RELOCATION shall be detailed in a subsequently executed Task Order Agreement (Task Order).

2.2 TASK ORDERS

FACILITY WORK specific to a particular FACILITY'S RELOCATION shall be detailed in a TASK ORDER executed by the AUTHORITY, the AUTHORITY'S CONTRACTOR and the LOCAL AGENCY. The TASK ORDER shall be generally in the form of Appendix B, and will set forth among other things, the arrangements among the three parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the FACILITY WORK for a specific FACILITY. The content of each Task Order shall be mutually agreed upon by the AUTHORITY, the AUTHORITY'S CONTRACTOR and the LOCAL AGENCY, subject to compliance with the requirements of this Agreement. Task Orders may cover RELOCATION of a single FACILITY, or of a group of FACILITIES.

2.3 BETTERMENT WORK AT LOCAL AGENCY'S REQUEST

Any work considered a BETTERMENT, as defined herein, made at LOCAL AGENCY'S request shall be agreed upon in advance by the PARTIES and detailed in a TASK ORDER, along with costs and allocation of responsibility for such costs to LOCAL AGENCY.

2.4 UNFORESEEN WORK

If any UNFORESEEN WORK arises during the performance of the FACILITY WORK, it shall be performed under the TASK ORDER that is applicable to the FACILITY WORK to which it relates. If the UNFORESEEN WORK does not arise in connection with any FACILITY WORK, it shall be addressed in a separate TASK ORDER under this Agreement. Notwithstanding the foregoing, the AUTHORITY reserves the right to make the final determination as to whether any UNFORESEEN WORK will be performed and LOCAL AGENCY is obligated to comply with AUTHORITY's determination.

3. LIABILITY FOR WORK

3.1 GENERAL

Liability for the cost of FACILITY WORK shall be determined by statute, superior

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rights, prescriptive rights (under court order) contractual rights, permit or common law, as applicable (collectively referred to as "PRIOR RIGHTS"). LOCAL AGENCY is responsible to prepare, document and submit a claim for its declared right of occupancy for each FACILITY for which it claims PRIOR RIGHTS, which claim shall be subject to AUTHORITY's approval. For each FACILITY, the allocation of liability determined pursuant to this Section 3 shall be stated in the relevant TASK ORDER.

3.2 AUTHORITY'S EXPENSE

Unless LOCAL AGENCY agrees otherwise in writing, FACILITY WORK will be performed at AUTHORITY's expense where PRIOR RIGHTS dictate that the cost for such work shall be borne by AUTHORITY. The burden of establishing PRIOR RIGHTS rests with the LOCAL AGENCY.

3.3 LOCAL AGENCY'S EXPENSE

FACILITY WORK will be performed at LOCAL AGENCY's EXPENSE where:

- (A) Work is mutually determined in writing to be a BETTERMENT as defined in herein;
- (B) LOCAL AGENCY is unable to produce documentation satisfactory to AUTHORITY of its PRIOR RIGHTS to the property area where its FACILITIES are located;
- (C) It is determined by PRIOR RIGHTS that the cost for such work shall be borne by LOCAL AGENCY; or
- (D) LOCAL AGENCY agrees in writing.

3.4 SHARED EXPENSE

FACILITY WORK will be performed at the shared expense of AUTHORITY and LOCAL AGENCY in circumstances where the PARTIES agree in writing to do so. The proportion of FACILITY WORK expense to be borne by each PARTY shall be clearly identified in the TASK ORDER for that FACILITY WORK.

3.5 LIABILITY IN DISPUTE

In signing this Agreement, neither the AUTHORITY nor the LOCAL AGENCY shall diminish their respective positions nor waive any of their respective rights nor does either PARTY accept liability for any disputed work. AUTHORITY and LOCAL AGENCY reserve the right to have disputes regarding liability resolved by future negotiations or in accordance with the dispute resolution terms of the CONSTRUCTION CONTRACT.

3.6 AUTHORITY'S CONTRACTOR CLAIMS

In the event the AUTHORITY'S CONTRACTOR provides a notice of intent to make a claim against the AUTHORITY relating to the FACILITY WORK, the AUTHORITY will, in accordance with the AUTHORITY's dispute resolution procedure, notify LOCAL AGENCY of the notice of intent.

In the event the AUTHORITY'S CONTRACTOR makes any claim against the AUTHORITY relating to the FACILITY WORK, the AUTHORITY will notify the LOCAL AGENCY of the claim and the LOCAL AGENCY will cooperate with the AUTHORITY in analyzing and resolving the claim within the time required by the CONSTRUCTION CONTRACT.

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Because the FACILITY WORK may be reimbursable to LOCAL AGENCY under this Agreement, the AUTHORITY may withhold reimbursement to the LOCAL AGENCY until final resolution (including any actual payment required) of all claims relating to the FACILITY WORK. The right to withhold shall be limited to actual claim payments made by the AUTHORITY to the AUTHORITY'S CONTRACTOR.

3.7 DISPUTES

The AUTHORITY and the LOCAL AGENCY agree that, as a general principle, the PARTIES shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the LOCAL AGENCY disagrees with a determination or matter made by the AUTHORITY, the LOCAL AGENCY shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the PARTIES shall attempt to resolve such dispute through the partnering process, which may include escalation with the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the LOCAL AGENCY shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the LOCAL AGENCY. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the LOCAL AGENCY mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In connection with any appeal of the AUTHORITY'S decision, the LOCAL AGENCY shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the LOCAL AGENCY shall continue with or permit the continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the AUTHORITY'S responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either PARTY, within the timeframe specified above, elect to refer a dispute to binding arbitration, then within 30 days after such request, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance,

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such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 *et seq.* and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Madera County.

If it is determined, on appeal, that the AUTHORITY'S interpretation of the Agreement, direction to the LOCAL AGENCY, or any other action required by the AUTHORITY'S decision was an erroneous determination of the rights and obligations of the PARTIES under the Agreement, the LOCAL AGENCY's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the LOCAL AGENCY with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in the LOCAL AGENCY'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

4. PERFORMANCE OF WORK

4.1 GENERAL

All FACILITY WORK (design and construction phases) or portions thereof may be performed by the LOCAL AGENCY, the AUTHORITY or the AUTHORITY's CONTRACTOR, as agreed by said parties. Specific procedures, if any, that shall be followed in performance of the FACILITY WORK, the costs therefor and the allocation of responsibility for performing the various portions of FACILITY WORK shall be clearly stated in the TASK ORDER for that work.

4.2 AUTHORITY'S CONTRACTOR PERFORMS WORK

When all or portion of the FACILITY WORK is to be performed by the AUTHORITY or the AUTHORITY's CONTRACTOR, the LOCAL AGENCY shall have access to all phases of the FACILITY WORK for the purpose of inspection to verify that the work is completed in accordance with the TASK ORDER pertaining to that work; however, all questions regarding the work being performed will be directed the AUTHORITY or its authorized representative for evaluation and final disposition.

Upon AUTHORITY's written notice to the LOCAL AGENCY, the LOCAL AGENCY shall consider AUTHORITY's CONTRACTOR as acting on behalf of AUTHORITY for all matters pertaining to PROJECT(s) that are specifically identified in said notice.

4.3 STAKEHOLDER COLLABORATION

In signing this Agreement, the LOCAL AGENCY agrees to collaborate with the AUTHORITY, the AUTHORITY's CONTRACTOR, and any other third-party entities affected by the PROJECT(s), including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as STAKEHOLDERS, to identify collaborative methods for resolving issues that may arise as part of the PROJECT and/or FACILITY WORK in an effort to achieve a quality PROJECT(s) that meets the PROJECT schedule and budget.

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STAKEHOLDERS will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the PROJECT(s). During the initial workshop, STAKEHOLDERS will develop procedures and agreements (including TASK ORDERS) as specified in APPENDIX E, "STAKEHOLDER COLLABORATION," included herein, to facilitate the collaborative relationship and aid in identifying and resolving issues as they arise throughout the PROJECT(s).

Reimbursement to the LOCAL AGENCY for the cost of participation in the initial workshop and subsequent STAKEHOLDER meetings shall be made, at the AUTHORITY's discretion by either the AUTHORITY or the AUTHORITY's CONTRACTOR.

Except to the extent otherwise required by law, neither the language of this clause, including the language in APPENDIX E, nor any statements made or materials prepared during or relating to STAKEHOLDER meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5. PAYMENT FOR WORK

5.1 COST OF FACILITY WORK

Cost of FACILITY WORK includes the actual allowable, allocable and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled FACILITIES used in any RELOCATION, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private FACILITY right of way involved in the FACILITY WORK, except as follows:

- (A) In any case in which the AUTHORITY is required under the provisions of this Agreement to pay its share of the cost of RELOCATION of any FACILITIES, the AUTHORITY shall be entitled to credits as follows:
 - (1) The amount of any BETTERMENT to the FACILITIES resulting from such RELOCATION.
- (B) A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the LOCAL AGENCY.
- (C) A credit allowance for age shall not be applied to publicly owned sewers.
- (D) Eligible LOCAL AGENCY costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. The LOCAL AGENCY agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:
<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

In conjunction with the foregoing, the LOCAL AGENCY acknowledges and agrees that it shall have no right to salvage any of the materials or parts contained within the FACILITIES and hereby assigns all such salvage rights to the AUTHORITY.

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5.2 PAYMENT FOR THE COST OF FACILITY WORK

If the FACILITY WORK is at the AUTHORITY's expense, then the AUTHORITY shall pay or cause payment to be made to the LOCAL AGENCY in the amounts as established for the cost of FACILITY WORK performed by the LOCAL AGENCY, less the credits as determined in Section 5.1. At the AUTHORITY's discretion, the responsibility for making such payments to the LOCAL AGENCY may be delegated to AUTHORITY's CONTRACTOR; in such circumstances, the LOCAL AGENCY agrees to the AUTHORITY's delegation to the AUTHORITY's CONTRACTOR of the responsibility to make reimbursement payments to the LOCAL AGENCY.

If the FACILITY WORK is at the LOCAL AGENCY's expense and is performed by the AUTHORITY or the AUTHORITY's CONTRACTOR, the LOCAL AGENCY shall pay or cause payment to be made to the AUTHORITY or the AUTHORITY's CONTRACTOR (as designated by the AUTHORITY in written notice to LOCAL AGENCY) in the amounts established pursuant to this Agreement for the cost of FACILITY WORK, plus the amount of any credits as determined in Section 5.1. At the AUTHORITY's discretion, the AUTHORITY's CONTRACTOR is authorized to accept such payment from the LOCAL AGENCY; in such circumstances, the LOCAL AGENCY agrees to collection by the AUTHORITY'S CONTRACTOR of reimbursement directly from the LOCAL AGENCY.

5.3 INVOICING PROCEDURES

LOCAL AGENCY will invoice the AUTHORITY'S CONTRACTOR in accordance with the LOCAL AGENCY's invoicing procedures.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

LOCAL AGENCY:

BY: 

Signature

DATE: 7/24/12

Typed Name:

JOHANNES J. HOEVERTSZ

Typed Title:

ROAD COMMISSIONER

LOCAL AGENCY Legal Review

BY: 

Signature – LOCAL AGENCY Legal Counsel

DATE: 6/27/12

Approval by the California High Speed Rail Authority

BY: _____

Signature

DATE: _____

AUTHORITY Legal Review

BY: _____

Signature - AUTHORITY Legal Counsel

DATE: _____

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APPENDIX A – GENERAL CONDITIONS

DEACTIVATED FACILITIES

The LOCAL AGENCY's FACILITIES shall not remain in the AUTHORITY's right of way after the FACILITIES are no longer active (DEACTIVATED), unless specifically authorized in writing by the AUTHORITY at its sole discretion. The following terms and conditions shall apply to DEACTIVATED FACILITIES allowed to remain within the AUTHORITY's right of way:

- A. The LOCAL AGENCY acknowledges its present and continuing ownership of and responsibility for the DEACTIVATED FACILITIES.
- B. If the AUTHORITY agrees to allow the LOCAL AGENCY to leave the DEACTIVATED FACILITIES located within the right of way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the LOCAL AGENCY. In the event of a breach of this Agreement by the LOCAL AGENCY, the DEACTIVATED FACILITIES shall be removed upon demand from AUTHORITY at the expense of the LOCAL AGENCY.
- C. The LOCAL AGENCY shall take such steps to secure the DEACTIVATED FACILITIES and otherwise make such DEACTIVATED FACILITIES safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the LOCAL AGENCY to use due care in its dealings with others. The LOCAL AGENCY shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The LOCAL AGENCY shall keep and preserve all records relating to the DEACTIVATED FACILITIES, including, but not limited to, records of the location, nature of, and steps taken to safely secure the DEACTIVATED FACILITIES and shall promptly respond to information requests from the AUTHORITY concerning the DEACTIVATED FACILITIES or other STAKEHOLDERS using or seeking use of the right of way.
- E. The LOCAL AGENCY shall remove the DEACTIVATED FACILITIES within thirty (30) days' of a written request from the AUTHORITY in the event that the AUTHORITY determines removal necessary for any of the following reasons: the AUTHORITY needs the use of the right of way, the right of way is needed for other active FACILITIES that cannot be otherwise accommodated, or where the DEACTIVATED FACILITY adversely affects safety and operation of the PROJECT(s). In the event that the DEACTIVATED FACILITIES would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the LOCAL AGENCY and without any right of the LOCAL AGENCY to object or make any claim of any nature whatsoever with regard thereto. In the event that the DEACTIVATED FACILITIES would have qualified for reimbursement, removal of the DEACTIVATED FACILITIES shall be reimbursed by the AUTHORITY as though the DEACTIVATED FACILITIES had not been DEACTIVATED. In the event that the LOCAL AGENCY fails to perform the

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removal properly within the specified time, AUTHORITY may proceed to perform the removal at the LOCAL AGENCY's sole expense.

- F. Except as otherwise provided, the LOCAL AGENCY agrees that the DEACTIVATED FACILITIES shall forever remain the legal and financial responsibility of the LOCAL AGENCY. The LOCAL AGENCY shall reimburse the AUTHORITY for any and all costs of any nature whatsoever resulting from the presence of the DEACTIVATED FACILITIES within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the DEACTIVATED FACILITIES or from the presence of any hazardous substance or material in the DEACTIVATED FACILITIES or the discharge of HAZARDOUS MATERIALS from the DEACTIVATED FACILITIES.

DEFAULT

In the event that the LOCAL AGENCY breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by applicable law, the AUTHORITY may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the AUTHORITY.
- B. Perform any work with its own forces or through subcontractors and seek repayment from the LOCAL AGENCY for the cost thereof.

Without limiting the generality of the foregoing, the LOCAL AGENCY'S failure to review, inspect and/or provide comments within the applicable time period required in this Agreement shall be considered an event of default. The AUTHORITY will treat the LOCAL AGENCY'S failure to provide comments as approval and proceed with the FACILITY WORK accordingly.

In the event that the AUTHORITY breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the LOCAL AGENCY may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either PARTY from any obligations it has pursuant to other agreements or TASK ORDERS between the PARTIES, nor from any statutory obligations that either PARTY may have with regard to the subject matter hereof.

AUTHORITY may unilaterally cancel this Agreement for refusal by the LOCAL AGENCY to allow access to all public documents, papers, letters, or other material that is made or received by the LOCAL AGENCY in conjunction with this Agreement.

If AUTHORITY's PROJECT(s) which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the LOCAL AGENCY, the AUTHORITY will notify LOCAL AGENCY in writing, and the AUTHORITY reserves the right to terminate this Agreement by such written notice.

Notwithstanding any dispute, the PARTIES agree that they will continue their respective

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performances required hereunder unless and until termination of this Agreement has occurred, including payment of

undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any PARTY under this Agreement or any other agreement or TASK ORDERS executed pursuant hereto, or otherwise available pursuant to applicable law. The PARTIES acknowledge and agree that delays in RELOCATIONS may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the AUTHORITY shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay PROJECT(s) construction.

INDEMNIFICATION

Each PARTY shall defend, hold harmless, and indemnify the other PARTY and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of the other PARTY or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either PARTY's obligations under this Agreement or under any TASK ORDER executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTIES indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified PARTY.

When the AUTHORITY receives a notice of claim for damages that may have been caused by the LOCAL AGENCY in the performance of services required under this Agreement, AUTHORITY will immediately forward the claim to the LOCAL AGENCY. The LOCAL AGENCY and the AUTHORITY will evaluate the claim and report their findings to each other within fourteen (14) days and will jointly discuss options in defending the claim. After reviewing the claim, the AUTHORITY will determine whether to require the participation of the LOCAL AGENCY in the defense of the claim or to require the LOCAL AGENCY to defend the AUTHORITY in such claim as described in this section. The AUTHORITY's failure to notify the LOCAL AGENCY of a claim shall not release the LOCAL AGENCY from any of the requirements of this section.

The LOCAL AGENCY's obligation to defend and indemnify shall not be excused because of the LOCAL AGENCY's inability to evaluate liability or because the LOCAL AGENCY evaluates liability and determines the LOCAL AGENCY is not liable or determines the AUTHORITY is solely negligent or has engaged in willful misconduct. Only a final adjudication or judgment finding that the AUTHORITY has been solely negligent or has acted with willful misconduct shall excuse performance of this provision by the LOCAL AGENCY. The LOCAL AGENCY shall pay all costs and fees related to this obligation and its enforcement by the AUTHORITY. The AUTHORITY's delay in notifying the LOCAL AGENCY of a claim shall not release the LOCAL AGENCY of the above duty to defend.

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FORCE MAJEURE

Neither the LOCAL AGENCY nor the AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing Party and which could not have been avoided or overcome by the exercise of due diligence; provided that the Party claiming the excuse from performance has:

- A. Promptly notified the other Party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as practicable.

If any such event of Force Majeure occurs, the LOCAL AGENCY agrees, if requested by the AUTHORITY, to accelerate its efforts if reasonably feasible to regain lost time, so long as the AUTHORITY agrees to reimburse the LOCAL AGENCY for the reasonable and actual costs of such acceleration.

LOCAL AGENCY'S FACILITY AND RIGHT OF WAY

The LOCAL AGENCY's FACILITIES shall at all times remain the property of and be properly protected and maintained by the LOCAL AGENCY.

Whenever the LOCAL AGENCY's affected FACILITIES will remain within the AUTHORITY's right of way, the AUTHORITY and the LOCAL AGENCY shall jointly execute an agreement for common use of the subject area, such agreement shall be in accordance with the Authority's policies and procedures for joint or common use of the Authority's right of way

Whenever the LOCAL AGENCY's affected FACILITIES are to be relocated from the existing right of way of the LOCAL AGENCY to a new location that falls outside such existing right of way of the LOCAL AGENCY, the AUTHORITY shall convey or cause to be conveyed a new right of way for such relocated FACILITIES as will correspond to the existing right of way of the LOCAL AGENCY. For such RELOCATED FACILITIES, the AUTHORITY shall issue, or cause to be issued, to the LOCAL AGENCY, without charge to the LOCAL AGENCY or credit to the AUTHORITY, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and the LOCAL AGENCY for those rights previously held by the LOCAL AGENCY in its existing right of way. In discharge of the AUTHORITY's obligations under this Paragraph, in the event that the new location falls within the right of way under the jurisdiction of the AUTHORITY, the AUTHORITY and the LOCAL AGENCY shall jointly execute an agreement for common use as stated in the above paragraph. In consideration for these replacement rights being issued by the AUTHORITY, the LOCAL AGENCY shall subsequently vacate and convey to the AUTHORITY, or its nominee, within the AUTHORITY's right of way, all of its corresponding right, title and interest within the LOCAL AGENCY's existing right of

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way so vacated.

If the existing RIGHT OF WAY OF THE LOCAL AGENCY includes fee title, the AUTHORITY shall acquire from the LOCAL AGENCY, for just compensation under State law, those property rights required by the AUTHORITY for its FACILITIES by separate transaction, leaving to the LOCAL AGENCY those remaining property rights appropriate for the placement and operation of the LOCAL AGENCY's FACILITIES in the RIGHT OF WAY OF THE LOCAL AGENCY.

Upon completion of the FACILITIES WORK by the AUTHORITY, the new FACILITIES shall become the property of the LOCAL AGENCY, and the LOCAL AGENCY shall have the same rights in the new location that it had in the old location.

INTEGRATION

This Agreement constitutes the complete and final expression of the PARTIES with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the PARTIES understand and agree that the AUTHORITY has written policies and procedures which shall be applicable as written at the time of AGREEMENT execution. Copies of the AUTHORITY policies and procedures will be provided to the LOCAL AGENCY upon request, as they become available. The allocation of costs for any additional activities that may be required on the part of the LOCAL AGENCY as provided by the AUTHORITY policies and procedures will be detailed through a TASK ORDER specific to that WORK. This Agreement cannot be modified except by an instrument, in writing, signed by each of the PARTIES.

SEVERABILITY

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. The stricken provisions shall be construed as nearly as possible to the intent of the PARTIES.

GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

NOTICES

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or receipted courier and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The PARTIES shall have a continuing obligation to notify the PARTY of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to LOCAL AGENCY:

LOCAL AGENCY Name: THE COUNTY OF MADERA

Person in Charge: Douglas Nelson or Douglas Papagni, County Counsel

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Address: 200 W Fourth St
Madera, CA 93637

If to AUTHORITY:
AUTHORITY: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz, General Counsel
Address: 770 L Street, Suite 800
Sacramento, CA 95814

WASTED WORK

The AUTHORITY will pay, in its entirety, that portion of the cost of the FACILITY WORK constituting WASTED WORK. The remainder of the cost of that FACILITY'S RELOCATION shall be borne pursuant to the cost allocation provisions defined in the TASK ORDER for that work.

HAZARDOUS MATERIAL

Upon discovery of HAZARDOUS MATERIAL in connection with the FACILITIES WORK, both the LOCAL AGENCY and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the LOCAL AGENCY shall immediately reschedule the work in accordance with the AUTHORITY's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL.

- A. The AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within the AUTHORITY's right of way to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL found as a consequence of that FACILITIES WORK, unless such conditions are attributable to the LOCAL AGENCY's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the AUTHORITY's right of way which is required to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL shall be allocated between the PARTIES pursuant to the provisions of Section 5 of the Master Agreement, "PAYMENT FOR WORK."
- C. Each PARTY to this Agreement retains the right to pursue recovery of its share of any such HAZARDOUS MATERIAL related costs from the other PARTY or third parties in accordance with existing law.

SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the PARTIES.

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THIRD PARTIES

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement unless assigned. This Agreement is not intended to affect the legal liability of PARTIES by imposing any standard of care for completing WORK different from the standards imposed by law.

The PARTIES agree that Authority shall have the right, in its sole discretion, without additional compensation to the LOCAL AGENCY, to assign this MASTER AGREEMENT and any or all associated TASK ORDERS to the AUTHORITY'S CONTRACTOR.

STATE FUNDS

No state funds or resources are allocated or encumbered as against this Agreement and AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed TASK ORDER.

AMERICAN RECOVERY AND REINVESTMENT ACT AND AUTHORITY

The provisions included in Appendix D, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the LOCAL AGENCY shall ensure full compliance with these provisions to the extent they apply to the MASTER AGREEMENT and subsequent TASK ORDERS.

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APPENDIX B – TASK ORDER FORM

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APPENDIX C – DESIGN BUILD PROCEDURES

INITIAL COORDINATION

- A. The LOCAL AGENCY shall advise the AUTHORITY in writing of the place and the name and telephone number of a contact person for the LOCAL AGENCY who has charge over the FACILITIES WORK and will serve as the primary contact for the LOCAL AGENCY on all related issues.
- B. The AUTHORITY will compile information from the LOCAL AGENCY that will illustrate the nature and locations of the LOCAL AGENCY's existing FACILITIES. The AUTHORITY will present this information on a series of preliminary drawings and tables that will be used to determine conflicts with PROJECT FACILITIES.
- C. The LOCAL AGENCY will furnish markups to the AUTHORITY of their existing and proposed FACILITIES on the preliminary submittals within 25 working days.
- D. The AUTHORITY will prepare Proposed Preliminary Design plans that indicate which utilities are to be relocated and conceptual arrangements of the relocated utilities.
- E. The LOCAL AGENCY will verify, to the best of their ability, the correctness and completeness of the plans prepared by the AUTHORITY.
- F. These plans will form the basis of subsequent design to be performed by the LOCAL AGENCY, the AUTHORITY or the AUTHORITY's CONTRACTOR, as such; the LOCAL AGENCY shall take sole and full responsibility for the accuracy of their depicted FACILITIES.

PERFORMANCE OF THE FACILITIES WORK

The method of performance to be utilized in the design and construction of the FACILITIES WORK, as described below, will be specified in the executed TASK ORDER for the particular FACILITIES WORK contemplated.

The LOCAL AGENCY agrees to (a) the AUTHORITY'S delegation to the AUTHORITY'S CONTRACTOR, the responsibility to reimburse the LOCAL AGENCY, and (b) the AUTHORITY'S CONTRACTOR's collection of reimbursement directly from the LOCAL AGENCY having cost responsibility for the RELOCATIONS and/or for BETTERMENTS.

Performance of the FACILITIES WORK will be in accord with the following method:

The AUTHORITY's CONTRACTOR performs all design and construction services for the FACILITIES WORK.

- A. At such time as the AUTHORITY's CONTRACTOR has plans prepared to a level where the impact on the LOCAL AGENCY'S FACILITIES and the nature and extent of the FACILITIES WORK can be determined, hereinafter referred to as FACILITIES PLANS,

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the AUTHORITY's CONTRACTOR will provide a copy of the FACILITIES PLANS to the LOCAL AGENCY. The FACILITIES PLANS shall include a preliminary FACILITIES WORK design concept which was created by the AUTHORITY's CONTRACTOR. FACILITIES PLAN submittals will be packaged separately according to the AUTHORITY's CONTRACTOR's approved schedule and may include the following categories: substructure, superstructure, and traffic plan with submittal stages at intermediate, Released for Construction (RFC) and As-Built stages.

- B. The LOCAL AGENCY shall have 25 working days from receipt of the FACILITIES PLANS intermediate submittal to review them, and provide comments to the AUTHORITY'S CONTRACTOR. The LOCAL AGENCY shall also provide any applicable technical provisions and standard drawings along with their comments.
- C. At such time as the AUTHORITY's CONTRACTOR has prepared RFC FACILITIES PLANS, including the FACILITIES WORK, the AUTHORITY'S CONTRACTOR will provide a copy thereof to LOCAL AGENCY. The RFC FACILITIES PLANS shall incorporate the comments of the LOCAL AGENCY provided that the comments are reasonable and do not impair or create inconsistencies with the AUTHORITY'S CONTRACTOR'S Agreement with the AUTHORITY.
- D. The LOCAL AGENCY shall have 25 working days from receipt of the RFC FACILITIES PLANS to review them and provide final comments to the AUTHORITY'S CONTRACTOR.
- E. The AUTHORITY's CONTRACTOR shall make final corrections to the FACILITIES PLANS and provide a copy to the LOCAL AGENCY.
- F. The AUTHORITY's CONTRACTOR shall perform the construction services for the FACILITIES WORK in accordance with the RFC FACILITIES PLANS as corrected by the LOCAL AGENCY.
- G. Deviations from the corrected RFC FACILITIES PLANS initiated by the AUTHORITY, the AUTHORITY's CONTRACTOR or the LOCAL AGENCY, must be agreed upon by all PARTIES and memorialized in an Amendment to the TASK ORDER for the original FACILITIES WORK. No deviation from the original FACILITIES WORK shall commence without a fully executed Amendment.
- H. The LOCAL AGENCY shall be entitled to have a reasonable number of representatives on the site of PROJECT to verify that the FACILITIES WORK is being properly performed by the AUTHORITY's CONTRACTOR. Where the number of representatives poses an interference or hindrance to the progress of the PROJECT, it shall be deemed unreasonable. The LOCAL AGENCY's representatives shall at all times comply with all of the AUTHORITY's CONTRACTOR's work rules and regulations while on the Project Site. If any representative fails to comply with said work rules and regulations, the AUTHORITY's CONTRACTOR shall have the exclusive right to prohibit the representative from access to the Project Site thereafter.
- I. Upon completion of the FACILITIES WORK, the LOCAL AGENCY agrees to accept ownership and maintenance of the constructed FACILITIES.

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- J. The process established above shall apply separately to each phase or segment of PROJECT, as established in accordance with the agreement between the AUTHORITY's CONTRACTOR and the AUTHORITY.
- K. The AUTHORITY shall provide the LOCAL AGENCY with as-built drawings of the FACILITIES WORK outside the AUTHORITY's right of way. The as built drawings shall be in the format provided for in the TASK ORDER for that particular FACILITIES WORK.

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APPENDIX D – ARRA AND AUTHORITY PROVISIONS

ARRA T&C

MASTER AGREEMENT**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS**

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

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- (i.) The name of the project or activity;
 - (ii.) A description of the project or activity;
 - (iii.) An evaluation of the completion status of the project or activity; and
 - (iv.) An estimate of the number of jobs created and /or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
- (i.) The name of the entity receiving the contract;
 - (ii.) The amount of the contract;
 - (iii.) The transaction type;
 - (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - (v.) The Program source;
 - (vi.) An award title descriptive of the purpose of each funding action;
 - (vii.) The location of the entity receiving the contract;
 - (viii.) The primary location of the contract, including the city, state, congressional district and country;
 - (ix.) The DUNS number, or name and zip code for the entity headquarters;
 - (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
 - (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.
- Any other information reasonably requested by the State of California or required by state or federal law or regulation.***
- Standard data elements and federal Instructions for use in complying with reporting requirements under Section 1612 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

08/10/09

MASTER AGREEMENT**CCC 307 – CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|--|--|
| Contractor/Bidder Firm Name (Printed) <i>County of Madera</i> | | Federal ID Number <i>94-6000518</i> |
| By (Authorized Signature) <i>Johannes J. Hoevertsz</i> | | |
| Printed Name and Title of Person Signing <i>Johannes J. Hoevertsz Road Commissioner</i> | | |
| Date Executed <i>7-24-12</i> | Executed in the County of <i>Madera</i> | |

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

MASTER AGREEMENT

CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.
6. **SWEATFREE CODE OF CONDUCT:**
 - a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.
7. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

HSR13-06 - EXECUTION VERSION

MASTER AGREEMENT**FORM GTC 610****DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. LOCAL AGENCY may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the LOCAL AGENCY, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** LOCAL AGENCY agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. LOCAL AGENCY agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. LOCAL AGENCY agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, LOCAL AGENCY agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** LOCAL AGENCY agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the LOCAL AGENCY in the performance of this Agreement.
6. **DISPUTES:** LOCAL AGENCY shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the LOCAL AGENCY fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the LOCAL AGENCY under this Agreement and the balance, if any, shall be paid to the LOCAL AGENCY upon demand.
8. **INDEPENDENT CONTRACTOR:** LOCAL AGENCY, and the agents and employees of LOCAL AGENCY, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION:** The LOCAL AGENCY shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, LOCAL AGENCY and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial

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MASTER AGREEMENT

of family care leave. LOCAL AGENCY, its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. LOCAL AGENCY, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. LOCAL AGENCY, its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

LOCAL AGENCY shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid LOCAL AGENCY, as provided herein, shall be in compensation for all of LOCAL AGENCY'S expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The LOCAL AGENCY by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the LOCAL AGENCY shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the LOCAL AGENCY acknowledges in accordance with Public Contract Code 7110, that:

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MASTER AGREEMENT

a. The LOCAL AGENCY recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The LOCAL AGENCY, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the LOCAL AGENCY shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then LOCAL AGENCY must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract LOCAL AGENCY made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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MASTER AGREEMENT**APPENDIX E – STAKEHOLDER COLLABORATION**

In order to accomplish PROJECT(s) through the most effective means available, a collaboration will be formed as agreed to by PARTIES in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaboration, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration and cooperation is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the STAKEHOLDERS to resolve issues that may arise during the performance of FACILITIES WORK.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the PROJECT(s), the STAKEHOLDERS agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the partnering relationship and aid in identifying and resolving issues as they may arise throughout the PROJECT:

- A. “*Issues Resolution Ladder*” (*IRS*) – a hierarchy of those individuals within the PROJECT including the STAKEHOLDERS and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Stakeholder Implementation Plan*” (*SIP*) – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the FACILITIES WORK to be addressed by the STAKEHOLDERS
- C. “*Stakeholder Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the partnering vision, goals and relationship. The charter will be signed by all STAKEHOLDERS

STAKEHOLDER MEETINGS

The purpose of the collaboration meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve PROJECT issues.

10 Madera Irrigation District Master Agreement

ADDENDUM 9

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California High Speed Rail Authority

Master Agreement

Madera Irrigation District

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AGREEMENT REGARDING HIGH-SPEED RAIL CROSSING OF MADERA IRRIGATION DISTRICT FACILITIES

THIS AGREEMENT is made effective as of _____, 2012 by and between (i) the California High Speed Rail Authority, an agency of the State of California ("AUTHORITY") and (ii) the Madera Irrigation District, a California irrigation district ("MID"). AUTHORITY and MID are sometimes referred to below individually as "Party" and together as the "Parties."

RECITALS

A. MID owns, operates, and maintains certain facilities for the delivery of agricultural irrigation water and groundwater recharge ("MID Facilities") under its authority as an irrigation district pursuant to Section 20500 et seq. of the California Water Code. MID's service area includes portions of the AUTHORITY'S high-speed rail corridor.

B. The AUTHORITY desires to install, maintain, repair and replace certain high-speed rail related facilities ("Rail Facilities") in and over real property in which MID has rights of way or owns in fee for MID Facilities. In many instances, the construction and operation of the Rail Facilities will require modification, protection, relocation or replacement of MID Facilities.

C. The Parties desire to provide terms for the modification or replacement of various MID Facilities in connection with construction of Rail Facilities ("Projects"). The parties further desire to provide for the common use of their respective rights-of-way where such areas overlap.

D. The AUTHORITY is obligated to reimburse MID for all costs and expenses incurred by MID in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the Parties agree as follows:

Article I DEFINITIONS

The following terms shall have the following meanings as used in this Agreement:

"AUTHORITY" is defined in the Preamble.

"AUTHORITY Project" means a segment of the Rail Facilities (as determined by the AUTHORITY) and the work undertaken or contracted for by the AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing Rail Facilities). All references herein to the "AUTHORITY Project" refer to the AUTHORITY Project that impacts the MID Facilities, and when used in reference to a particular MID Facility, refer to the AUTHORITY Project that impacts the referenced MID Facility.

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“Betterment” means the cost of any upgrades to the MID Facilities not attributable to the AUTHORITY Project and made solely for the benefit, and at the election of MID. As employed herein, for the sake of clarification Betterment does not include: (i) those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirements or any upgrades required by MID’s customary practices, drawings and specifications, (ii) standards of practice and construction methods applied to comparable MID Facilities constructed by or for MID at its own expense, that are in effect as of the date of execution of the specific Task Order for that MID Facilities Work or (iii) facility improvements required due to safety concerns.

“Authority’s Contractor” is defined in Section 3.2.

“Claims” is defined in Section 4.1.

“Common Use Area” is defined in Section 5.1.

“Common Use Agreement” is defined in Section 5.1.

“Construction Contract” means the contract between the AUTHORITY and the Authority’s Contractor for construction (with or without design) of the Project work that is impacting MID. All references herein to “the Construction Contract” refer to the Construction Contract(s) for the Project(s) that impact MID Facilities, and when used in reference to a particular MID Facility, refer to the Construction Contract that impacts the referenced MID Facility.

“Engineer” is defined in Section 2.1.

“Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

“MID” is defined in the Preamble. For any provision of this Agreement where MID is to be indemnified, “MID” shall also include MID’s directors, officers, employees, agents and volunteers.

“MID Facilities” is defined in Recital A.

“MID Facility Work” is, in general, the modification, protection or Relocation of existing MID Facilities, or the construction of new MID Facilities (or any combination thereof) that will be or remain the property of MID.

“MID Right-of-Way” shall mean any real property rights held by MID for the location and operation of MID Facilities, including, but not limited to, fee title and easement rights.

“Plans and Specifications” is defined in Section 2.1.

“Prior Rights” is defined in Section 3.11.

“Projects” is defined in Recital C.

“Rail Facilities” is defined in Recital B.

“Relocation” means removal, protection or any other rearrangement or modification of an MID Facility as ordered and approved by the AUTHORITY to accommodate any of the AUTHORITY’S Projects that may impact MID Facilities. Relocation shall include, but not be limited to, the preparation and submission by Authority’s Contractor of Relocation plans or drawings sufficiently engineered to allow for the construction of the ordered Relocation, and a detailed estimate by MID of the actual and necessary cost of the ordered Relocation including review and inspection for approval by the Authority and/or MID.

“Stakeholders” shall mean the AUTHORITY, the Authority’s Contractor, and all parties with property or facilities affected by a Project.

“State” shall mean the State of California.

“Task Order” is defined in Section 3.3.

“Unforeseen Work” means any new and/or extra work found essential to the satisfactory completion of the Projects and not covered by any of the various Task Orders.

“Wasted Work” means design, design review, construction work or inspection performed by MID upon written direction from the AUTHORITY, for a Relocation rendered useless or unnecessary as a result of AUTHORITY’S cancellation and/or changes in the scope of work as agreed to by the Parties. This term includes any other design or construction work that is needed to accommodate the AUTHORITY Project and is subsequently rendered unnecessary.

Article II DESIGN AND ENGINEERING

2.1 Design/Build. AUTHORITY shall cause the Authority’s Contractor to prepare drawings, plans and specifications as necessary to set forth in detail the requirements for the MID Facility Work to be performed under this Agreement (the “Plans and Specifications”), as otherwise provided in Exhibit A hereto. The AUTHORITY shall cause Authority’s Contractor to select either Provost & Pritchard Engineering Group, Inc. or Blair, Church & Flynn, to design the Plans and Specifications (the “Engineer”).

Article III WORK TO BE DONE

3.1 MID Facility Work. The AUTHORITY or the Authority’s Contractor shall perform the MID Facility Work in accordance with the Plans and Specifications applicable to each Project. MID Facility Work includes the permitting related to the Relocation, modification or protection as well as any necessary certification or coordination with regulatory agencies and any other miscellaneous work related to the Relocation, modification or protection of an existing or construction of a new (or any combination thereof) MID Facility. MID Facility Work specific

to a particular MID Facility's Relocation, modification, protection or replacement shall be detailed in a subsequently executed Task Order.

3.2 Authority's Contractor. The MID Facility Work shall be performed by licensed, qualified contractors to be hired by the AUTHORITY (each an "Authority's Contractor"). MID shall have no responsibility to pay for any Facility Work, except as MID may otherwise agree in writing. The Authority's Contractor, subcontractors or other individuals directly or indirectly hired or employed by the AUTHORITY shall have the skills and experience required to perform the MID Facility Work assigned to them.

3.3 Task Orders. Work specific to particular MID Facilities Relocation, protection, modification or replacement (i.e., a Project) shall be detailed in a subsequently executed Task Order Agreement to be executed by the AUTHORITY, the Authority's Contractor and MID ("Task Order"). Any deviation from the Plans and Specifications for a Task Order must be agreed upon by the Parties and memorialized in an amendment to the relevant Task Order, and no such deviation from the original Task Order shall commence without a fully executed amendment. The Task Order will set forth the arrangements between the Parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the MID Facilities Work for a specific MID Facilities. Format of the Task Order and its content shall be mutually agreed upon by the AUTHORITY, the Authority's Contractor, and MID, subject to the compliance of the requirements of this agreement. Task Orders may cover relocation of a single MID Facility, or a group of MID Facilities.

3.4 General AUTHORITY Responsibility. In performing the MID Facility Work, the AUTHORITY (either directly or through its Contactor) shall be solely responsible for:

- (a) Ensuring that all construction means, methods, techniques, sequences and procedures, and construction quality conform to the Plans and Specifications, as modified by agreement of the Parties and Authority's Contractor.
- (b) Project site safety, including implementing, maintaining and supervising a Project safety plan;
- (c) Coordinating all portions of the Project;
- (d) Implementation of all reasonable measures and precautions to prevent damage, injury or loss to: (i) all persons who are on the Project site or who could foreseeably be affected by construction of the Project; (ii) the Project and materials and equipment to be incorporated therein; and (iii) other property at or adjacent to the Project site;
- (e) Provision of appropriate security for the Project site;
- (f) Reasonable clean-up of the Project site at the end of each day during which work on the Project site is performed;
- (g) Risk of loss for damage to or loss to the MID Facility Work or of any property at the Project site occurring prior to final acceptance by MID;

(h) Securing, at its expense, any permits and governmental approvals necessary for the proper execution and completion of the Project;

(i) Giving any notices required by laws, ordinances, rules, regulations and lawful orders of public authorities;

(j) Ensuring that all Projects remain free and clear of any and all claims for labor, materials, and design services;

(h) Perform the MID Facility Work using best professional skill and judgment, acting with due care and in accordance with professional standards of care and construction practices generally accepted as standards of the industry in the State of California; and

(i) Complete the MID Facility Work on a timely basis, with due consideration given to MID's irrigation schedules.

When all or portions of the MID Facility Work are performed by the Authority's Contractor, MID shall have access to all phases of the MID Facility Work for the purpose of inspection to ensure that the relevant MID Facility Work is completed in accordance with the Task Order pertaining to that work; however, all questions regarding the work being performed will be directed to the AUTHORITY or its authorized agent for evaluation and final disposition. Notwithstanding the foregoing, MID shall not disrupt or interfere with the MID Facility Work or the AUTHORITY Project.

3.5 General Project Construction Requirements. General construction requirements for MID Facility Work are set forth in Exhibit B hereto. Exceptions from such requirements may be made for specific Projects by notice from the AUTHORITY to MID.

3.6 MID Representatives. MID shall be entitled to have a reasonable number of representatives, including the Engineer, on the site of each Project to verify that the work is being properly performed by the Authority's Contractor. The presence of such representative, however, is solely for MID's benefit, and shall not relieve the AUTHORITY of its obligation to supervise and perform the MID Facility Work in accordance with the Plans and Specifications and otherwise in accordance with this Agreement and the applicable Task Order. Notwithstanding the foregoing, MID representatives, including the Engineer, shall not disrupt or interfere with the MID Facility Work or the AUTHORITY Project.

3.7 Acceptance. Upon completion of a Project in accordance with the Plans and Specifications, as provided in writing by AUTHORITY or Authority's Contractor to MID, and after the expiration of the enforcement period for any stop notices filed in connection with the Project, MID shall accept ownership and maintenance of the constructed MID Facilities. MID shall not be required to accept ownership of any Project which is the subject of filed and ongoing litigation.

3.8 Unforeseen Work. If Unforeseen Work arises during the performance of the MID Facility Work, it shall be performed under the Task Order that is applicable to the MID Facility

Work it arose in connection with. The AUTHORITY shall be responsible for the cost of any Unforeseen Work.

3.9 Hazardous Material. Upon discovery of Hazardous Material in connection with the MID Facility Work, both MID and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action in compliance with existing statutes or regulations concerning the disposition of Hazardous Material. The AUTHORITY will pay, in its entirety, all costs necessary to comply with existing statutes or regulations concerning the disposition of Hazardous Material within the AUTHORITY's right-of-way found as a consequence of that MID Facility Work, unless the Hazardous Materials are attributable to or were exacerbated by the MID Facilities or MID's operations. Those costs for efforts undertaken within the area of the replacement property right located outside the AUTHORITY'S right of way which are required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of this Article III. Each party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

3.10 Betterment Work at MID's Request. Any work considered a Betterment, as defined herein shall be agreed upon in advance by the Parties and detailed in a Task Order, along with costs and allocation of responsibility for such costs to MID.

3.11 Liability for Work. Liability for the cost of MID Facility Work shall be determined by statute, superior rights, prescriptive rights (under court order), contractual rights, permit, or common law, as applicable, collectively referred to as Prior Rights. MID is responsible to prepare, document, and submit a claim, at the AUTHORITY'S sole expense, for its declared right of occupancy for each MID Facility for which it claims Prior Rights, which claim shall be subject to the AUTHORITY'S approval. For each MID Facility, the allocation of liability determined to this Section 3 shall be stated in the relevant Task Order.

3.12 Authority's Expense.

(a) Unless MID agrees otherwise in writing, MID Facility Work will be performed at the AUTHORITY'S expense. MID shall have no responsibility to pay for any Facility Work, except as provided in Section 3.13 below. The AUTHORITY shall defend, indemnify, and hold MID harmless from any claims for design, labor, materials or similar items in connection with any MID Facility Work, except as provided in Section 3.13 below.

(b) The burden of establishing Prior Rights rests with MID at AUTHORITY'S expense. Prior Rights may be established by (i) recorded documents, plat maps, or other county records, (ii) originals or copies of documents granting an interest in the real property in question to MID, executed by the grantor, (iii) a written statement, executed by an officer of MID, indicating that according to MID's written records, MID has maintained a given facility in its current location for the period of time necessary to establish Prior Rights, or (iv) any other historic document evidencing that an irrigation facilities (public or private) has been located in a given location for the period of time necessary to establish Prior Rights, provided, however, that in the absence of such documentation, the existence of a FACILITY

owned and maintained by MID shall be considered satisfactory evidence of MID'S prescriptive rights regarding such facility, even if no instrument, recorded or otherwise, exists formalizing MID'S right of occupancy.

3.13 MID's Expense. MID Facility Work will be performed at MID's expense where: (a) work is determined in writing to be a Betterment; (b) MID is unable to produce adequate documentation of its Prior Rights pursuant to Section 3.12(b) above; (c) it is determined by Prior Rights that the cost for such work shall be borne by MID; and (d) MID agrees in writing.

3.14 Shared Expense. MID Facility Work will be performed at the shared expense of AUTHORITY and MID in circumstances where the Parties agree in writing to do so. The proportion of MID Facility Work expense to be borne by each Party shall be clearly identified in the Task Order for that MID Facility Work.

3.15 Liability in Dispute. In signing this Agreement, neither the AUTHORITY nor MID shall diminish their respective positions nor waive any of their respective rights nor does either Party accept liability for any disputed work. The AUTHORITY and MID reserve the right to have disputes regarding liability resolved by future negotiations or as otherwise provided in this Agreement.

3.16 Claims by Authority's Contractor. In the event the Authority's Contractor makes any claim against the AUTHORITY relating to the MID Facility Work, the AUTHORITY will notify MID of the claim, and MID will cooperate with AUTHORITY in assessing and resolving the claim within the required time by the Construction Contract.

3.17 Stakeholder Collaboration. In signing this Agreement, MID agrees to collaborate with the AUTHORITY, the Authority's Contractor, and any other third-party entities affected by the Project(s), including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as Stakeholders, to identify collaborative methods for resolving issues that may arise as part of the Project and/or MID Facility Work in an effort to achieve a quality AUTHORITY Project that meets the AUTHORITY Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the Project. During the initial workshop, Stakeholders will develop procedures and agreements (including Task Orders) as specified in Exhibit C, "Stakeholder Collaboration," included herein, to facilitate the Stakeholder relationship and aid in identifying and resolving issues as they arise throughout the Project(s).

Reimbursement to MID for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the AUTHORITY or the Authority's Contractor.

Subject to the requirements of the California Public Records Act, relevant judicial reference statutes and the California Evidence Code, neither the language of this Stakeholder clause, including the language in Exhibit C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3.18 Cost of MID Facility Work. Cost of MID Facility Work includes the actual, allowable, allocable and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled MID Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to such MID Facility Work, and any necessary new MID Right-of-Way involved in the MID Facility Work, except that, the AUTHORITY shall be entitled to credit for the cost of any Betterment to the MID Facility included as part of the Project. A credit allowance for age shall not be applied to existing MID Facilities. Except as otherwise provided in this Agreement, eligible MID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A.

In any case in which the AUTHORITY is required under the provisions of this Agreement to pay its share of the cost of relocation of any MID Facility, AUTHORITY shall be entitled to credits as follows:

- (1) The amount of any Betterment to the MID Facilities resulting from such Relocation; and
- (2) The salvage value of any materials or parts salvaged or retained by MID.

A credit shall not be allowed against any portion of the cost that is otherwise chargeable to MID.

A credit allowance for age shall not be applied to publicly owned sewers.

Eligible MID costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. MID agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

3.19 Payment for the Cost of MID Facility Work.

(a) If the MID Facility Work is at the AUTHORITY's expense, then the AUTHORITY shall pay the Authority's Contractor directly, less the credits determined. MID shall be responsible to pay the Authority's Contractor for the amount of any credits given to the AUTHORITY as described in subsection (b) below.

(b) If MID Facility Work is at MID's expense and is performed by the Authority's Contractor, MID shall pay or cause payment to be made to the Authority's Contractor (as designated by the AUTHORITY in written notice to MID) in the amounts established pursuant to this Agreement for the cost of MID Facility Work, plus the amount of any credits as determined in Section 3.17.

3.20 Invoicing Procedures. MID will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor, which shall provide for payment to MID not later than 45 days after submission of invoice.

Article IV INDEMNITY AND INSURANCE

4.1 Indemnity by AUTHORITY.

(a) To the fullest extent permitted by law, the AUTHORITY shall defend, indemnify, and hold MID harmless from and against any claims, liabilities, damages, losses and expenses, of any nature whatsoever, arising out of or resulting from the performance of the MID Facilities Work ("Claims"), excepting only such Claims as may be proximately caused by the sole or exclusive negligence of, or by the willful misconduct of MID or its employees, directors, agents, servants, or independent contractors who are directly responsible to MID. Such indemnity shall extend to Claims occurring after completion of the Project in question, as well as during the construction of such Project.

(b) The AUTHORITY's obligation to defend and indemnify shall not be excused because of the AUTHORITY's inability to evaluate liability or because the AUTHORITY evaluates liability and determines the AUTHORITY is not liable or determines that MID is solely negligent or has acted with willful misconduct. Only a final adjudication or judgment finding that MID is solely negligent or has acted with willful misconduct shall excuse performance of this provision by the AUTHORITY. The AUTHORITY shall pay all costs and fees related to this obligation and its enforcement by MID. MID's delay in notifying the AUTHORITY of a claim shall not release the AUTHORITY of the above duty to defend.

(c) When the AUTHORITY receives notice of a Claim that may have been caused by MID in the performance of services required under this Agreement, the AUTHORITY will immediately forward the Claim to MID. The AUTHORITY and MID will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the Claim. After reviewing the Claim, the AUTHORITY will determine whether to require the participation of MID in the defense of the Claim or to require MID to defend the AUTHORITY in such Claim. The AUTHORITY's failure to notify MID of a claim shall not release MID from any of the requirements of this section or Section 4.2.

4.2 Indemnity by MID. To the fullest extent permitted by law, MID shall defend, indemnify and hold the AUTHORITY harmless from and against any Claims arising out of or resulting from the sole or exclusive negligence or willful misconduct of MID or its employees, directors, agents, servants or independent contractors who are directly responsible to MID. MID's obligation to defend and indemnify shall not be excused because of MID's inability to evaluate liability or because MID evaluates liability and determines MID is not liable or determines the AUTHORITY is solely negligent or has acted with willful misconduct. Only a final adjudication or judgment finding that the AUTHORITY is solely negligent or has acted with willful misconduct shall excuse performance of this provision by MID. MID shall pay all costs and fees related to this obligation and its enforcement by the AUTHORITY. The AUTHORITY's delay in notifying MID of a Claim shall not release MID of the above duty to defend.

4.3 Insurance. Any contract entered into by the AUTHORITY in connection with the MID Facility Work shall contain a provision which requires the Authority's Contractor, as part of the liability insurance requirements, to provide an endorsement (in form acceptable to both Parties) to each policy of general or automobile liability insurance that names as additional insured's to such policy (not subject to any premiums or assessments) MID and the

AUTHORITY and their respective officers and employees, as well as such other additional insured's as either Party shall reasonably require (provided that the risk and cost assumed by either Party under this Agreement does not increase as a result of naming such other additional insured's). The parties referred to in the previous sentence are collectively referred to herein as the "Additional Insured Group." Unless otherwise mutually agreed by the Parties, the Authority's Contractor shall provide evidence of at least Commercial General Liability Limits of \$2,000,000, Aggregate; Per Occurrence of \$1,000,000; Auto Liability of \$1,000,000; Workers Compensation and Liability of \$1,000,000; with excess/umbrella liability insurance in addition. Prior to commencement of any MID Facility Work, an insurance certificate evidencing the required coverage shall be provided directly by the insurer to MID and the AUTHORITY, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to MID and the AUTHORITY. MID recognizes and agrees that all or part of such insurance can be provided by the AUTHORITY through an owner-controller insurance program.

Article V

AREAS OF COMMON USE; RELOCATED MID FACILITIES

5.1 Common Use Areas. MID Facilities shall at all times remain the property of and be properly protected and maintained by MID; subject, however, to the following. Whenever affected MID Facilities will remain within the AUTHORITY's right-of-way (a "Common Use Area"), the AUTHORITY and MID shall jointly execute an agreement for common use of the subject area, such agreement shall be in accordance with the AUTHORITY'S policies and procedures for joint or common use of the AUTHORITY'S right of way.

5.2 Relocation of MID Rights-of-Way. Whenever affected MID Facilities are to be Relocated from the existing MID Right-of-Way to a new location, the AUTHORITY shall convey or cause to be conveyed a new right-of-way for such relocated Facilities on terms and conditions that are substantially similar to the existing MID Right-of-Way. For such Relocations, the AUTHORITY shall issue, or cause to be issued, to MID, without charge to MID, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and MID for those rights previously associated with the existing MID Right-of-Way. Without limiting the foregoing, if MID has exclusive rights to the existing MID Right-of-Way, any replacement right-of-way shall provide MID with similar exclusive rights, except to the extent that the new location falls within the right-of-way under the jurisdiction of the AUTHORITY. In that event, the AUTHORITY and MID shall jointly execute a Common Use Agreement. In consideration for these replacement rights being issued by the AUTHORITY, MID shall subsequently quitclaim to the AUTHORITY, or its nominee, within the AUTHORITY's Right-of-Way, all of its corresponding right, title and interest in and to the MID Right-of-Way so vacated. Upon completion of the MID Facility Work by the AUTHORITY, the new MID Facilities shall become the property of MID, and MID shall have the same rights in the new location that it had in the old location as modified by agreements in writing between the AUTHORITY and MID.

5.3 Compensation for MID Fee Title. If the existing MID Right-of-Way includes fee title, the AUTHORITY shall acquire from MID, for just compensation under California law,

those property rights required by the AUTHORITY for the Rail Facilities by separate transaction, leaving to MID those remaining property rights appropriate for the placement and operation of the MID Facilities in the MID Right-of-Way, as reasonably determined by MID. Upon completion of MID Facility Work by the AUTHORITY or the Authority's Contractor, the new MID Facilities shall become property of MID, and MID shall have the same rights in the new location that it had in the old location as modified by agreements in writing between the AUTHORITY and MID.

Article VI MISCELLANEOUS

6.1 Compliance with Public Works Laws. The AUTHORITY shall be responsible to comply with or ensure compliance by the Authority's Contractor with all applicable California and federal laws relating to the construction of public works projects, including, but not limited to, applicable provisions of the California Public Contract Code, the California Labor Code, and any laws or regulatory requirements associated with the use of federal funds ("Public Works Laws"). The AUTHORITY acknowledges that MID does not have extensive experience with public works projects that involve state and federal funds, and that MID has elected to have the AUTHORITY perform the MID Facilities Work for, among other reasons, the purpose of utilizing the AUTHORITY's resources in complying with Public Works Laws. The AUTHORITY shall defend, indemnify and hold MID harmless from and against any Claims arising from failure to comply with Public Works Laws, except where the responsibility for compliance with such laws cannot legally be shifted from MID.

6.2 Compliance with CEQA. The AUTHORITY shall be solely responsible for all environmental review and other actions required under the California Environmental Quality Act and any other state or federal environmental review laws applicable to any Project ("Environmental Review Laws"), except for those actions which by law cannot be delegated to another agency and must be taken by MID. To the maximum extent permitted by law, the AUTHORITY shall defend, indemnify and hold MID harmless from and against any Claims arising from any failure to comply with Environmental Review Laws as described in this Section 6.2.

6.3 State Funds. No state funds or resources are allocated or encumbered as against this Agreement and the AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.4 American Recovery and Reinvestment Act and Authority. To the extent applicable, the provisions included in Exhibit D, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in this Agreement.

6.5 Force Majeure. Neither MID nor the AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an

act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has: (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as practicable.

6.6 Time. Time is of the essence of this Agreement and each and all of its provisions.

6.7 Effect of Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

6.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto.

6.9 Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

6.10 Counterparts; Fax and Email Signatures. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Facsimile and electronic mail signature pages shall constitute originals, however, without affecting the enforceability of such signatures as originals, each party shall provide original signature pages to the other parties within five (5) business days of the execution of this Agreement.

6.11 Assignment; Binding Effect. Neither party shall assign any interest in this Agreement without the express written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, the AUTHORITY shall be permitted to assign this agreement to the Authority's Contractors without the Consent of MID. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

6.12 Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

6.13 Disputes. The AUTHORITY and MID agree that, as a general principle, the Parties shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event MID disagrees with a determination or

matter made by the AUTHORITY, MID shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the Parties shall attempt to resolve such dispute through the partnering process, which may include escalation within the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then MID shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY shall reduce its decision to writing and mail or otherwise furnish a copy thereof to MID. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, MID mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In connection with any appeal of the AUTHORITY'S decision, MID shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, MID shall continue with or permit the continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the AUTHORITY'S responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 *et seq.* and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Madera County.

If it is determined, on appeal, that the AUTHORITY'S interpretation of the Agreement, direction to MID, or any other action required by the AUTHORITY's decision was an erroneous determination of the rights and obligations of the Parties under this Agreement, MID's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by MID with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in MID'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

6.14 Professionals' Fees. Should any action or proceeding be commenced between the Parties hereto concerning this Agreement, or the rights and duties of any Party in relation thereto, the Party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing Party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

6.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall lie in the County of Madera, California.

6.16 Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

6.17 Survival. Each of the terms, provisions, representations, warranties, and covenants of the Parties shall be continuous and shall survive the completion of any MID Facilities Work contemplated in this Agreement.

6.18 Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) or on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To AUTHORITY: California High Speed Rail Authority
Thomas Fellenz, Chief Counsel
770 L Street, Suite 800
Sacramento, CA 95814
Fax: (916) 322-0827

To MID: Madera Irrigation District
12152 Road 28 1/4
Madera, CA 93637
Attn: General Manager
Fax: (559) 673-3514

A Party may change its address for notices by providing notice to the other parties as provided above.

6.19 Severability. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.20 Default. In the event that either Party breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the other Party may (a) pursue a claim for damages suffered, or (b) perform any work with its own forces or through subcontractors and seek repayment for the cost thereof. Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary

damages could be inadequate to compensate for delays in the construction of the AUTHORITY Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay the AUTHORITY Project or Project construction.

6.21 Project Cancellation. If any portion of the AUTHORITY Project is canceled or modified so as to eliminate the necessity of the MID Facilities Work, the AUTHORITY will notify MID in writing, and the AUTHORITY reserves the right to terminate this Agreement as to such Project by amendment. The amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

California High Speed Rail Authority, an
agency of the State of California

By _____

Its _____

AUTHORITY Legal Review

By _____

AUTHORITY Legal Counsel

Madera Irrigation District, a California
irrigation district

By  _____
Gary Bursey, President

By  _____
Cynthia Rascoe, Secretary

HSR13-06 - EXECUTION VERSION

EXHIBIT A

DESIGN BUILD PROCEDURES

The following process shall apply separately to each phase or segment of the Project, as established in accordance with the agreement between the Authority's Contractor and the AUTHORITY.

A-1 Initial Coordination.

- (a) The AUTHORITY will develop 15% design submittals of the Rail Facilities, showing locations of existing MID Facilities.
- (b) MID will furnish markups to the AUTHORITY of the 15% submittals within thirty (30) working days.
- (c) The AUTHORITY will prepare proposed preliminary design plans that indicate which MID Facilities are to be Relocated and conceptual arrangements of the Relocated facilities.
- (d) MID will verify, to the best of its ability, the correctness of the proposed preliminary design plans prepared by the AUTHORITY.
- (e) These plans will form the basis of the Plans and Specifications. Once the Plans and Specifications have been approved by MID, MID shall have sole and full responsibility for the accuracy of depicted MID Facilities.

A-2 Plans and Specifications. The Authority's Contractor, together with the Engineer, shall perform all design services for the MID Facilities Work in connection with each Project.

- (f) The Authority's Contractor will provide a preliminary copy of Project-specific Plans and Specifications to MID according to the AUTHORITY's Contractor's approved schedule and may include intermediate, Released for Construction (RFC) and As Built Stages.
- (g) MID shall have thirty (30) working days from receipt of the preliminary Plans and Specifications intermediate submittal to review them, and to provide comments to the Authority's Contractor. MID shall also provide any applicable technical provisions and standard drawings along with its comments.
- (h) At such time as the Authority's Contractor has prepared RFC Plans and Specifications for the MID Facilities Work, the Authority's Contractor will provide a copy thereof to MID. The RFC Plans and Specifications shall incorporate the comments of MID provided that the comments are reasonable.

(i) MID shall have thirty (30) working days from receipt of the RFC Plans and Specifications to review them and provide final comments to the Authority's Contractor.

(j) The Authority's Contractor shall make final corrections to the RFC Plans and Specifications and provide a copy to MID.

(k) The Authority's Contractor shall perform the MID Facilities Work in accordance with the RFC Plans and Specifications as corrected by MID.

(l) The Authority's Contractor shall provide MID with as-built drawings of MID Facilities Work within ninety (90) days of completion. The as-built drawings shall be in the format provided for in the Task Order for that particular MID Facilities Work.

MID's failure to provide review and comment of the RFC Plans submitted by the AUTHORITY or the AUTHORITY'S CONTRACTOR, including but not limited to Plans and Specifications, shall be deemed approval of plans allowing the AUTHORITY to proceed with design and construction of Facility Work. Time for review shall not commence until the RFC Drawings have been accepted by MID.

EXHIBIT B

General Project Construction Requirements

B-1 Replacement of Existing Pipelines and Small/Medium Channel Open Canals.

- (a) All open channels and existing pipelines shall be replaced with ASTM C-361 Rubber Gasket Reinforced Concrete Pipe (RGRCP).
- (b) All pipelines shall be buried to a minimum depth of 36 inches.
- (c) If an MID Facility is to be relocated, the AUTHORITY shall acquire an exclusive easement on MID's behalf, at MID's standard widths for such facility and on MID's standard terms and conditions.
- (d) All work shall conform to MID standards and specifications.

B-2 Large Canal Crossing Requirements. Crossings for large canals shall protect the canal's integrity for an urban setting, and shall be designed to convey the water in a safe and efficient manner without altering the existing conditions in a negative manner in regards to MID's operations and maintenance. Additional requirements include:

- (e) Minimum freeboard of 2.0 feet through the canal crossing shall be maintained where possible. Crossings shall clear span bridges with no obstructions within the canal whenever reasonably possible.
- (f) Multiple bay culverts or bridges with pilings design must include sufficient access to remove trash in a safe and efficient manner, including additional access easement rights if necessary. Maintenance accessibility for trash removal shall be evaluated based on channel size, the amount of trash anticipated at the location in question and accessibility. Galvanized steel or concrete catwalk will be required on the upstream side of the bridge/culvert structure for MID's crews to access the collected trash. Trash piers, board guides, aprons and ladders shall be constructed in accordance with MID's current requirements.
- (g) Sufficient easement rights for MID to dredge the canals in accordance with its standard practices, including access for heavy equipment and trucks.
- (h) Relocation of existing road crossings which parallel Rail Facilities, such as Golden State Boulevard, must include access to both canal banks from the road. In general, a 50-foot wide drive approach narrowing to 20 feet wide drive bank will be required for each canal bank; different road crossings may require different access routes.
- (i) Culverts are to be extended past the AUTHORITY's right-of-way such that MID's equipment can safely access both banks for operations and maintenance purposes. All culverts require a minimum a minimum of 20 feet for 1 ton vehicle access; some crossings may need to be extended for larger equipment.

(j) Sufficient turnaround areas to accommodate the types of equipment necessary to maintain the MID Facility in question. Larger turnaround areas will be required for larger trucks and equipment.

(k) Gaps between bridges and culverts shall be of sufficient length for MID to reasonably maintain the gap area. Gaps that are too small for MID to maintain, as determined by MID in its reasonable discretion, shall not be permitted, and the two crossings shall be combined into a single crossing.

(l) At transition areas between bridge/culvert and open canal:

(i) Canal slopes shall be stabilized as necessary to shape side slopes to 1.5:1 (H:V) and shall be compacted to a minimum of 93 percent of maximum density.

(ii) All disturbed soil shall be concrete lined (both side slopes and bottom). In areas close to the Rail Facilities where access will be potentially dangerous for maintenance workers, structurally reinforced concrete will be required to minimize on-going maintenance activities.

(iii) Drive banks must be sloped a minimum of 2% away from the canal with provisions made for rainfall. Drainage will not be accepted into and must be routed away from canals, and must be conveyed to nearby public streets or drainage system by drainage swales or other alternatives reasonably acceptable to MID.

(iv) Drive banks shall be overlaid with 3 inches of Class 2 aggregate base course for all-weather access.

(v) All existing trees, bushes, debris, old canal structures, pumps, canal gates, and other non- or in-active MID and private structures must be removed within the MID Right-of-Way.

(m) All work shall conform to MID standards and specifications.

B-3 Construction Windows. All construction must occur outside MID's irrigation season. An exception to the above construction window requirement can only occur by mutual written agreement between the Authority's Contractor and MID.

B-4 Stormwater Routings. Where MID Facilities are used for stormwater and flood control, a bypass may be required, depending on the canal system, construction schedule, water season, and storm season. If a bypass is not constructed, all water will be required to pass through the Project site.

(n) The Engineer, with MID's approval, will determine the minimum flow rate if a bypass is required. The Engineer shall design the bypass system at the Authority's Contractor expense. The bypass system shall include facilities as necessary to convey waters downstream and away from the Project, and shall be the responsibility of the Authority's Contractor to install and maintain at all times.

(o) Should a bypass channel be constructed, a drive bank on both sides of the channel shall be incorporated for maintenance and operation purposes.

(p) Cofferdams (if any) must be constructed one foot below the canal's high water level.

(q) The AUTHORITY shall obtain appropriate easements or other rights necessary for the construction and operation of any bypass facilities located outside the existing MID right of way. The AUTHORITY shall cause the landowner and any parties in possession of the property where the bypass channel is located to release MID from any liability in the operation of such bypass.

B-5 Elevated Rail Facilities. Where Rail Facilities are to be located above grade:

(r) Pilings or columns for elevated Rail Facilities crossing MID pipelines shall be located outside of the MID Right-of-Way. Alternatively, the AUTHORITY may cause the pipeline to be replaced with RGRCP as described in Section B-1 above, with large spread footings for pilings or columns.

(s) Pilings or columns for elevated Rail Facilities crossing MID open canals may not be located in MID Right-of-Way. Gaps between elevated Rail Facilities over open canals shall be of sufficient length for MID to reasonably maintain the gap area. Portions of canals within such gaps that are too small for MID to maintain, as determined by MID in its reasonable discretion, shall be replaced with underground pipe.

(t) Sufficient clearance shall be provided over both canal maintenance/access roads for MID's largest equipment being hauled on a large tractor truck and trailer, unless the Rail Facilities right-of-way is to be fenced, eliminating access.

(u) If the Rail Facilities right-of-way is to be fenced, the AUTHORITY shall pipe the canal or place the canal within a culvert, such that routine maintenance is no longer necessary, and shall provide MID with an additional upstream trash collection location.

EXHIBIT C – STAKEHOLDER COLLABORATION

In order to accomplish the AUTHORITY Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 3.16 “Stakeholder Collaboration.” As part of this collaboration, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Cooperation and collaboration are strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of MID Facilities Work.

INITIAL KICK-OFF WORKSHOP

The Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the Project:

- A. “*Issues Resolution Ladder*” (IRL) – a hierarchy of those individuals within the Project including the Stakeholders and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Collaboration Implementation Plan*” (CIP) – the intention of the CIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the MID Facilities Work to be addressed by the Stakeholders.
- C. “*Cooperative Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholders vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the stakeholders relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve Project issues.

EXHIBIT D – ARRA AND AUTHORITY PROVISIONS

1. ARRA T&C

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONTRACTS USING ARRA FUNDS**

- (i.) The name of the project or activity;
- (ii.) A description of the project or activity;
- (iii.) An evaluation of the completion status of the project or activity; and
- (iv.) An estimate of the number of jobs created and /or retained by the project or activity;

d. For any contracts equal to or greater than \$25,000:

- (i.) The name of the entity receiving the contract;
- (ii.) The amount of the contract;
- (iii.) The transaction type;
- (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
- (v.) The Program source;
- (vi.) An award title descriptive of the purpose of each funding action;
- (vii.) The location of the entity receiving the contract;
- (viii.) The primary location of the contract, including the city, state, congressional district and country;
- (ix.) The DUNS number, or name and zip code for the entity headquarters;
- (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;

e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

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2. CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|---|----------------------------------|--------------------------|
| <i>Contractor/Bidder Firm Name (Printed)</i> | | <i>Federal ID Number</i> |
| <i>By (Authorized Signature)</i> | | |
| <i>Printed Name and Title of Person Signing</i> | | |
| <i>Date Executed</i> | <i>Executed in the County of</i> | |

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

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CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.

6. **SWEATFREE CODE OF CONDUCT:**

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.
7. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

3. GTC 610

DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. MID may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the MID, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: MID agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. MID agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. MID agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, MID agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: MID agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by MID in the performance of this Agreement.
6. DISPUTES: MID shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the MID fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the MID under this Agreement and the balance, if any, shall be paid to the MID upon demand.
8. INDEPENDENT CONTRACTOR: MID, and the agents and employees of MID, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The MID shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, MID and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. MID, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. MID, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable

regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. MID, its contractors, and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

MID shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid MID, as provided herein, shall be in compensation for all of MID's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The MID by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the MID shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the MID acknowledges in accordance with Public Contract Code 7110, that:

a. The MID recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of

information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The MID, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the MID shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then MID must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then MID must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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11 tw telecom of california l.p. Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

tw telecom of california l.p.

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| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and _____, a Delaware Limited Partnership whose principal mailing address is 10475 Park Meadow Drive, Littleton, CO 80124, and with a local mailing address of 1340 Treat Boulevard, Walnut Creek, CA 94597, hereinafter referred to as the "Utility Owner".

RECITALS

WHEREAS, the Utility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission and are located on a public road or publicly owned rail corridor; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Utility Owner's Facilities; and

WHEREAS, the Authority and the Utility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Utility Owner's Facilities.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Utility Owner agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person, other than the California Department of Transportation, an agency of the State of California, hereinafter referred to as "Caltrans", and Fresno, a city in Fresno County,



California, hereinafter referred to as “City of Fresno”, that enters into a contract with the Authority for the performance of Facility Work, as defined herein.

1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

“Betterment” means any improvement to the Utility Owner’s Facilities that is requested by Utility Owner and is required to be provided by the Authority pursuant to any fully executed Task Order, as defined herein, that identifies such improvements as Betterment.

Betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Utility Owner at its own expense, which are in effect as of the date of execution of the Cooperative Agreement.

1.4 Days

“Days” means calendar days, unless otherwise stated.

1.5 Facility

“Facility” or “Facilities” means any Utility, as defined herein, or any publicly owned and operated road, street, bridge, or grade separation.

1.6 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Built, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction of the HST Project associated with Relocation of Utilities.



1.7 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.8 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by a Notice to Owner or otherwise) by Caltrans and/or City of Fresno, directly or indirectly, is specifically excluded from the definition of HST Project.

1.9 Notice to Proceed

"Notice to Proceed" means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.

1.10 Party

"Party" refers to the Authority or the Utility Owner, as the context may require and "Parties" means the Authority and the Utility Owner, collectively.

1.11 Relocation

"Relocation" means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Utility Owner's Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.12 Right-of-way of Utility Owner

"Right-of-way of Utility Owner" means a property right held by the Utility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Utility Owner for the Facility to be located in a defined area of real property, or a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement.

1.13 Service Line

"Service Line" means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects



more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Utility Owner's Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

1.14 Task Order

"Task Order" means a work order or agreement among the Authority, the Authority's Contractor, and the Utility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.15 Unforeseen Work

"Unforeseen Work" means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.

1.16 Utility

"Utility" means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term "Utility" or "utility" specifically excludes (a) storm water facilities that provide drainage solely for the HST Project right-of-way, and (b) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.17 Wasted Work

"Wasted Work" means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority's cancellation and/or changes in the scope of work as agreed to by both Parties. This term



includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.18 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority’s Contractor and the Utility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by the Authority’s Contractor.

2.3 Betterment Work at the Utility Owner’s Request

Any work considered Betterment made at the Utility Owner’s request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose in connection with. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Utility Owner shall be obligated to comply with the Authority’s determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by statute, superior rights, prescriptive rights or by permit, collectively referred to as (“Prior Rights”). The burden of establishing Prior Rights rests with the Utility Owner, including the responsibility to prepare,



document and submit a claim for its declared right of occupancy in the defined property area where the Utility Owner's Facility is located.

3.2 Authority's Expense

Unless the Utility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights that the costs for such work shall be borne by the Authority.

3.3 Utility Owner's Expense

Facility Work will be performed at the Utility Owner's expense where:

- A. Facility Work is mutually determined herein to be a Betterment as defined in Section 1.3;
- B. The Utility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Utility Owner; or
- D. The Utility Owner agrees hereto.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Utility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Utility Owner of the claim and the Utility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Utility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Utility Owner under this Agreement, the Authority may withhold reimbursement to the Utility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.6 Disputes

The Authority and the Utility Owner agree that, as a general principle, the Parties shall attempt to resolve any and all disputes arising under this Agreement through a collaborative partnering



process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the Utility Owner disagrees with a determination or matter made by the Authority, the Utility Owner shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the Parties shall attempt to resolve such dispute through the partnering process, which may include escalation with the Authority at the Authority's discretion. If, within 14 days after conclusion of such partnering, the dispute persists, then the Utility Owner shall request a written statement of the Authority concerning its decision. The Authority shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Utility Owner. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such copy, the Utility Owner mails or otherwise furnishes a written appeal addressed to the Authority. The Authority shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In connection with any appeal of the Authority's decision, the Utility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the Utility Owner shall continue with or permit the continuance of the Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.

If it is determined, on appeal, that the Authority's interpretation of the Agreement, direction to the Utility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under the Agreement, the Utility Owner's claim and any award by resolver of the dispute shall be limited to the incremental



costs incurred by the Utility Owner with respect to the disputed matter (crediting the Authority for any corresponding reduction in the Utility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Utility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Utility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Utility Owner, the Utility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Utility owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Utility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Utility Owner agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Utility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Utility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Utility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Utility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The



Utility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Utility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Utility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance

The Utility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Utility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Utility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.

Unless otherwise mutually agreed upon by the Parties, construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of \$2,000,000 per accident.



- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by contractor hereunder shall contain or be endorsed to contain the following provisions:
 - 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 - 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Utility Owner and the Authority shall be transmitted directly by the insurer to the Utility Owner and the Authority. The Utility Owner recognizes and agrees that all or part of such insurance can be provided by the Authority through an owner-controller insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Utility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private utility owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," included herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.



Reimbursement to the Utility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made, at the Authority's discretion by either the Authority or the Authority's Contractor.

Subject to the requirements of the Public Information Act, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility, the Authority shall be entitled to credits as follows:
 1. The amount of any betterment to the utility Facility resulting from such relocation.
 2. The salvage value of any materials or parts salvaged and retained by Utility Owner.
 3. If a new utility Facility or portion thereof is constructed to accomplish such relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of FACILITY}}{\text{Normal expected Life}} \times \text{Original Cost}$$

- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Utility Owner.
- C. A credit allowance for age shall not be applied to publicly owned sewers.



- D. Eligible Utility Owner costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. Utility Owner agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

<http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Utility Owner in the amounts as established for Facility Work performed by the Utility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Utility Owner may be delegated to the Authority's Contractor; in such circumstances, the Utility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor the responsibility to make reimbursement payments to the Utility Owner; provided, however, that if the Authority's Contractor fails to timely make any required payments, responsibility for such payments will be remanded to the Authority.

If Facility Work is at the Utility Owner's expense and is performed by the Authority or the Authority's Contractor, the Utility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work less the credits as determined. At the Authority's discretion, the Authority's Contractor is authorized to accept such payment from the Utility Owner; in such circumstances, the Utility Owner agrees to the Authority's Contractor collection of reimbursement directly from the Utility Owner; provided, however, that if the Utility Owner fails to timely make any required payments, responsibility for such collection will be remanded to the Authority.

5.3 Invoicing Procedures

The Utility Owner will invoice the Authority's Contractor in accordance with the invoicing procedures of the Authority's Contractor.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

The Utility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Utility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.



- B. If the Authority subsequently agrees to allow the Utility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Utility Owner. In the event of a breach of this Agreement by the Utility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Utility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Utility Owner to use due care in its dealings with others. The Utility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Utility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Utility Owner shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Utility Owner and without any right of the Utility Owner to object or make any claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Utility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Utility Owner's sole expense.
- F. Except as otherwise provided, the Utility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Utility Owner. The Utility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of



any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

6.2 Default

In the event that the Utility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by Law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, the Utility Owner may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Utility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Utility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Utility Owner, the Authority will notify the Utility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.



6.3 Indemnification

Each Party shall hold harmless, and indemnify the other Party and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of either Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out either Party's obligations under this Agreement or under any Task Order executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the Parties indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified Party.

When the Authority receives a notice of claim for damages that may have been caused by the Utility Owner in the performance of services required under this Agreement, the Authority will immediately forward the claim to the Utility Owner. The Utility Owner and the Authority will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Authority will determine whether to require the participation of the Utility Owner in the defense of the claim or to require the Utility Owner to defend the Authority in such claim as described in this section. The Authority's failure to notify the Utility Owner of a claim shall not release the Utility Owner from any of the requirements of this section.

The Utility Owner's obligation to defend and indemnify shall not be excused because of the Utility Owner's inability to evaluate liability or because the Utility Owner evaluates liability and determines the Utility Owner is not liable or determines the Authority is solely negligent. Only a final adjudication or judgment finding the Authority solely negligent shall excuse performance of this provision by the Utility Owner. The Utility Owner shall pay all costs and fees related to this obligation and its enforcement by the Authority. The Authority's delay in notifying the Utility Owner of a claim shall not release the Utility Owner of the above duty to defend.

6.4 Force Majeure

Neither the Utility Owner nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;



- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed in the Contract;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Utility Owner related entity.

Provided that it is beyond its control and not due to an act or omission of the Utility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Utility owner agrees, if requested by the Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Utility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Utility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Utility Owner related entity and not listed in the definition of Force Majeure above.

6.5 Utility Owner's Facility and Right-of-way

The Utility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Utility Owner.

Whenever the Utility Owner's affected Facilities will remain within the Authority's right-of-



way, the Authority and the Utility Owner shall jointly execute an agreement for common use of the subject area.

The agreement for common use of the subject area will contain a provision for accommodation, location and method of installation, adjustments, removal, relocation and maintenance of Utility Owner's Facilities within the Authority's right-of-way. Prior to execution of an agreement for common use of the subject area or for Utility Owner's Facilities currently in the Authority's right-of-way, the Utility Owner shall apply for and obtain an encroachment permit.

Whenever the Utility Owner's affected Facilities are to be relocated from the existing right-of-way of the Utility Owner to a new location that falls outside such existing right-of-way of the Utility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing right-of-way of the Utility Owner. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Utility Owner, without charge to the Utility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Utility Owner for those rights previously held by the Utility Owner in its existing right-of-way. In discharge of the Authority's obligations under this Paragraph, in the event that the new location falls within the right-of-way under the jurisdiction of the Authority, the Authority and the Utility Owner shall jointly execute an agreement for joint use. In consideration for these replacement rights being issued by the Authority, the Utility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the Utility Owner's existing right-of-way so vacated.

If the existing Right-of-way of Utility Owner includes fee title, the Authority shall acquire from the Utility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Utility Owner those remaining property rights appropriate for the placement and operation of the Utility Owner's Facilities in the Right-of-way of Utility Owner.

Upon completion of Facility Work by the Authority, the new Facilities shall become the property of the Utility Owner, and the Utility Owner shall have the same rights in the new location that it had in the old location.

6.6 Applicability

This agreement applies to the Relocation of Utility Owner's Facilities to accommodate or permit construction of the HST Project. Caltrans may perform construction activities for roadway improvements adjacent to the HST Project. Any Facility Work related to Caltrans construction activities is specifically excluded from the terms and conditions of this Cooperative Agreement.



6.7 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award. Copies of the Authority policies and procedures will be provided to the Utility Owner as soon as practicable after they become available. The Authority shall pay for any damages suffered by or costs incurred by the Utility Owner for activities that may be required as a result of the Authority's policies and procedures. Such activities will be set forth in the Task Order specific to that Facility Work. This Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.

6.8 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.9 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.10 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Utility Owner shall have a continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

HSR13-06 - EXECUTION VERSION



If to UTILITY OWNER:

Utility Owner Name: tw telecom of california l.p.

Person in Charge: Susan Harden, Director Long Haul Operations

Address: 9665 Granite Ridge Dr., Suite 500

San Diego, CA 92123

with copy to:

Utility Owner Name: tw telecom of california l.p.

Person in Charge: Attn: Sr. VP & Deputy General Counsel

Address: 10475 Park Meadows Drive

Littleton, CO 80124

If to AUTHORITY:

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge: Thomas Fellenz, Chief Counsel

Address: 770 L Street, Suite 800

Sacramento, CA 95814

6.11 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.12 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Utility Owner and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Utility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.



- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Facility Work, unless such conditions are attributable to the Utility Owner's existing installation or operation.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."
- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.13 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

6.14 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.15 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.16 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Utility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders. Nothing in this agreement shall prevent the assignment of ARRA compliance tasks to the Authority's Contractor for the benefit of the Utility Owner.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.



UTILITY OWNER: tw telecom of california l.p.
By: tw telecom holdings inc., its general partner

Signature

Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:

Typed Name

AUTHORITY Legal Counsel

Typed Title

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Appendix A: Design-Build Procedures

1. PERFORMANCE OF THE FACILITY WORK

The Method of performance to be utilized in the design and construction of the Facility Work, as described below, will be specified in the executed Task Order for the particular Facility Work contemplated.

The Utility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Utility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Utility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work will be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work except Utility Owner will disconnect, pull and reconnect fiber optic lines.

The Authority's Contractor through

Fishel Company (Sal Padula)
5878 Autoport Mall
San Diego, CA 92121
858-658-0830

,
GSUC (Mark Overholt)
4425 Farm Supply Drive
Ceres, CA 95307
209-579-3400

,
HP Communications (Amanda Hokkanen)
13341 Temescal Canyon Rd
Corona, CA 92883
951-572-1200

, or
SECC (Jeff Patrick)
183 Business Center Drive
Corona, CA 92880-1757
951-734-3110

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performs all design and construction services for the Facility Work.

- A. At such time as the Authority's Contractor has plans prepared to a level where the impact on the Utility Owner's Facilities and the nature and extent of the Facility Work can be determined, hereinafter referred to as "Facility Plans", the Authority's Contractor will provide a copy of the Facility Plans to the Utility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Utility Owner's standards.
- B. The Utility Owner shall have twenty (20) working days from receipt of the Facility Plans to review them and provide comments to the Authority's Contractor and the Authority.
- C. The Authority's Contractor shall provide plans and specifications at the 30%, 60% and 90% development phase and/or any other agreed upon development milestones by the Authority, the Authority's Contractor, and the Utility Owner for review and comments. Time for review shall not commence until said milestones have been accepted by the Utility Owner.
- D. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Utility Owner. The final Facility Plans shall incorporate the comments of the Utility Owner. Detailed list of final method of inclusion of the Utility Owner's comments shall be provided to the Utility Owner by the Authority's Contractor.
- E. The Utility Owner shall have twenty (20) work days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Utility Owner's comments are not fully addressed or incorporated, the Utility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- F. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Utility Owner. This section shall not apply until paragraph 1.E of Appendix A is satisfied.
- G. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
- H. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Utility Owner, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work.

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No deviation from the original Facility Work shall commence without a fully executed Amendment.

- I. The Utility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Utility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- J. Upon completion of the Facility Work, the Utility Owner agrees to accept ownership and maintenance of the constructed Facilities.
- K. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- L. The Authority's Contractor shall provide the Utility Owner with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.

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Appendix B: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Utility Owner.

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SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS**1. ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

2. ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

3. PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

4. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432, section 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. For more information on FRA's Buy America requirements and processes please see FRA's Answers to Frequently Ask Questions (FAQ) available at, <http://www.fra.dot.gov/Page/P0391>.

5. WAGE RATE REQUIREMENTS:

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) and ARRA section 1606. For Project components uses or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use



rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C 3141 *et seq.*

6. INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

7. WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.



8. FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

9. REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- a. The total amount of ARRA funds received by Contractor during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A Description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - v. The Program source
 - vi. An award title descriptive of the purpose of each funding action;



- vii. The location of the entity receiving the contract;
- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.



6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.



6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and



made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS:

Time is of the essence in this Agreement.

13. COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.



- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)



Appendix C: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

- A. **“Issues Resolution Ladder” (IRL)** – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. **“Stakeholder Implementation Plan” (SIP)** – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.
- C. **“Stakeholder Charter”** – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.

STAKEHOLDER MEETINGS



The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

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12 Unknown Entity Cooperative Agreement

ADDENDUM 9

HSR13-06 - EXECUTION VERSION



California High-Speed Train Project



Cooperative Agreement

Unknown Entity

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1. AMENDMENT (CHANGE IN TERMS)

- a. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- b. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

1. TERMINATION

This section regarding termination is in addition to GTC 610.

- a. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- b. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

2. EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions



- a. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.
- b. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

3. CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

4. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.



5. TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

6. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 10 below.

7. CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

8. RETENTION OF RECORD/AUDITS

- a. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- b. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.



9. AUDIT REVIEW PROCEDURES

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.
- b. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- c. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

10. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

11. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

12. OWNERSHIP OF DATA

- a. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- b. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.



- c. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

13.CONFIDENTIALITY OF DATA

- a. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- c. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- d. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- e. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

14.STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.



15. DEBARMENT AND SUSPENSION CERTIFICATION

- a. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

16. CONFLICT OF INTEREST

- a. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- b. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- c. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

HSR13-06 - EXECUTION VERSION



Appendix 3: Stakeholder Collaboration

HSR13-06 - EXECUTION VERSION



| | | | |
|-----------------------|--|------------------------|--|
| Financial Project ID: | | Federal Project ID: | |
| County: | | AUTHORITY Document No: | |

PARTIES

THIS AGREEMENT, entered into this _____ day of _____, _____ (the "Agreement" or "Cooperative Agreement"), by and between the California High Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "Authority", and Unknown Entity, a conglomeration of yet undetermined utility owners whose principal mailing address is not known, hereinafter referred to as the "Facility Owner".

RECITALS

WHEREAS, the Facility Owner owns, operates, or maintains certain Facilities, as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission; and

WHEREAS, the Authority is responsible for the High Speed Train Project (the "HST Project"), as defined herein, and from time to time the HST Project involves Relocation, as defined herein, of the Facility Owner's Facilities; and

WHEREAS, the HST Project will be built in multiple phases; and

WHEREAS, the Authority and the Facility Owner desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Relocation of the Facility Owner's Facilities throughout the various phases of the HST Project.

NOW AND THEREFORE, for and in consideration for the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Facility Owner agree as follows:

1 DEFINITIONS

As used in this agreement, the following terms have the following meanings:

1.1 Authority's Contractor

The "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work, as defined herein, other than any Excluded Entity.



1.2 Authority Designated Holiday

“Authority Designated Holiday” means New Year’s Day (January 1), Martin Luther King, Jr. Day (third Monday in January), President’s Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), the day after Thanksgiving (fourth Friday in November), and Christmas Day (December 25).

1.3 Betterment

“Betterment” shall mean any upgrading of a replacement Facility that is not attributable to the construction of the HST Project and is made solely for the benefit of and at the election of the Facility Owner, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

- A. Any upgrading necessary for safe and effective construction of the HST Project;
- B. Replacement devices or materials that meet equivalent standards although they are not identical;
- C. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- D. Any upgrading required by applicable laws;
- E. Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or
- F. Any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Facility Owner at its own expenses, which are in effect as of the date of execution of the applicable Task Order.

1.4 Days

“Days” means calendar days, unless otherwise stated.

1.5 Excluded Entity

“Excluded Entity” means any public or private entity that enters into a contract with Authority to coordinate and/or perform work on its own facilities with work on the HST Project.



1.6 Facility

“Facility” or “Facilities” means any Utility, as defined herein, and/or or any publicly owned and operated road, street, bridge, or grade separation. The term “Facility” or “Facilities” includes traffic signals, street lights, and crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.7 Facility Work

“Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, implementation of warranty after construction completion, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HST Project.

1.8 Hazardous Material

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste, or other material of any nature whatsoever which may give rise to liability under state or federal law.

1.9 HST Project

HST Project means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code. Any portion of the HST Project for which design or construction work, including Facility Work, is performed, managed, contracted, or directed (by notice to owner or otherwise) by an Excluded Entity, directly or indirectly, is specifically excluded from the definition of HST Project.

1.10 Notice to Proceed

“Notice to Proceed” means written authorization by the Authority to begin performance of Facility Work as specified in Task Orders.



1.11 Party

“Party” refers to the Authority or the Facility Owner, as the context may require and “Parties” means the Authority and the Facility Owner, collectively.

1.12 Relocation

“Relocation” means alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all of the Facility Owner’s Facilities that is necessary in order to accommodate or permit construction of the HST Project.

1.13 Right-of-way of Facility Owner

“Right-of-way of Facility Owner” means a property right held by the Facility Owner in the form of either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the Facility Owner for the Facility to be located in a defined area of real property, including but not limited to a defined area within the HST Project right-of-way that is subject to a recorded Joint Use Agreement or Consent to Common Use Agreement. Right-of-way of Facility Owner does not include a franchise or license.

1.14 Service Line

“Service Line” means (a) any Utility line, the function of which is to directly connect the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, and (b) any cable or conduit that supplies an active feed from the Facility Owner’s Facilities to activate or energize governmental lighting and electrical systems, traffic control systems, communication systems or irrigation systems. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

1.15 Task Order

“Task Order” means a work order or agreement among the Authority, the Authority’s Contractor, and the Facility Owner, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment.

1.16 Unforeseen Work

“Unforeseen Work” means any new and extra work found essential to the satisfactory completion of the Relocation and not covered by any of the various Task Orders or by combination of such Task Orders.



1.17 Utility

“Utility” means, a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HST Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

1.18 Wasted Work

“Wasted Work” means design or construction work performed upon written direction from the Authority, for Relocation rendered useless or unnecessary as a result of the Authority’s cancellation and/or changes in the scope of work as agreed to by both Parties. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

1.19 Working Days

“Working Days” means each weekday that is not an Authority Designated Holiday.

2 WORK TO BE COMPLETED

2.1 Facility Work

Facility Work specific to a particular Facility’s Relocation shall be detailed in a subsequently executed Task Order.

2.2 Task Orders

The format of Task Orders and their contents shall be mutually agreed upon by the Authority, the Authority’s Contractor and the Facility Owner. Unexecuted Task Orders are drafts and their contents may not be relied upon by either Party. Task Orders for execution shall be prepared by



the Authority's Contractor. The Task Order will set forth among other things, the arrangements between the parties regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the Facility Work. Format of the Task Order and its content shall be mutually agreed upon by the Authority, the Authority's Contractor, and the Facility Owner.

2.3 Betterment Work at the Facility Owner's Request

Any work considered Betterment made at the Facility Owner's request shall be agreed upon in advance by the Parties and detailed in a Task Order along with costs and allocation of responsibility for such costs to the Facility Owner.

2.4 Unforeseen Work

If any Unforeseen Work arises during the performance of Facility Work, it shall be performed under the Task Order that is applicable to the Facility Work under which it arose. If Unforeseen Work does not arise in connection with any Facility Work, it shall be treated as a separate phase or segment of the HST Project under this Agreement. The Authority reserves the right to make the final determination as to whether any Unforeseen Work must be performed and the Facility Owner shall be obligated to comply with the Authority's determination.

3 LIABILITY FOR WORK

3.1 Prior Rights

Liability for the cost of Facility Work shall be determined by applicable law, including, without limitation, statute, superior rights, or prescriptive rights, collectively referred to as ("Prior Rights"). The burden of establishing Prior Rights rests with the Facility Owner, including the responsibility to prepare, document and submit a claim for its declared right of occupancy in the defined property area where the Facility Owner's Facility is located.

The Authority may enforce any obligation of the Facility Owner's franchise or encroachment permit grantees on any Authority property and right of way including requiring any person who has placed and maintained any pole, pole line, pipe, pipeline, conduit, street railroad tracks, or other structures or facilities whether under that or any franchise or permit to move it at his or her own cost and expense to such different location in the Facility Owner's jurisdiction as specified in a written demand by the Authority. The Authority shall provide a reasonable time within which the Facility Work shall commence. Upon written request of Authority, Facility Owner shall assist Authority in enforcing such rights by issuing to the relevant grantee any written Relocation notice required under the franchise or encroachment permit.



3.2 Authority's Expense

Unless the Facility Owner agrees otherwise herein, the Facility Work will be performed at the Authority's expense in circumstances where by Prior Rights the costs for such work shall be borne by the Authority.

3.3 Facility Owner's Expense

Facility Work will be performed at the Facility Owner's expense where:

- A. Facility Work is a Betterment as defined in Section 1.3;
- B. The Facility Owner is unable to produce adequate documentation of its Prior Rights to the property area where its Facility is located;
- C. It is determined by Prior Rights that the cost for such work shall be borne by the Facility Owner; or
- D. The Facility Owner agrees to perform the work at its own expense.

3.4 Shared Expense

Facility Work will be performed at the shared expense of the Authority and the Facility Owner in circumstances where the Parties agree in advance to do so. The proportion of Facility Work expense to be borne by each Party shall be detailed in the Task Order for that Facility Work.

3.5 Disputed Cost Liability

In circumstances where a dispute exists between the Parties as to whether the Facility Owner has a Prior Right to maintain and operate its facilities in their present location and which Party must bear the expense of Facility Work required for a Relocation pursuant to a Task Order, the Parties agree to proceed with the Facility Work required by the Task Order and to reserve the issue of liability for the cost of the Facility Work detailed in the Task Order as hereinafter provided. In such case, the Authority, either directly or through Authority's Contractor, shall advance funds for the cost of the Facility Work as if such costs were Authority's expense as provided in Section 3.2, of this Cooperative Agreement,

Authority and Facility Owner agree that after execution of the Task Order for Facility Work where cost liability is disputed, they shall negotiate in good faith with the goal of reaching an agreement as to the allocation of costs for the Facility Work. If Facility Owner fails to negotiate in good faith, or if no agreement is executed and delivered on or before ten (10) days after the date of completion of the Facility Work, then notwithstanding the disputes resolution process set forth in Section 3.7 of this Cooperative Agreement, Authority shall have the immediate right to pursue a determination of the cost responsibility through either mandatory binding arbitration (pursuant to the arbitration process set forth in Section 3.7) or through litigation in a



court of competent jurisdiction, in Authority's sole discretion. It is further agreed by Facility Owner and Authority that in case of disputed liability, (a) neither the advance or return of funds pursuant to this Cooperative Agreement nor the performance by Facility Owner of the Facility Work shall be deemed a waiver, compromise or admission of liability, (b) the fact that such advance and/or return of funds and performance of Facility Work occur shall not be pertinent to and shall not be considered or offered as evidence regarding the issue of liability, (c) the issue of liability shall be reserved for resolution by subsequent agreement, arbitration or litigation, and (d) the time for commencing an action for the recovery of any funds advanced by Authority for the cost of the Facility Work shall begin to run as of the tenth day after completion of the Facility Work, and Facility Owner waives any applicable statute of limitation to the contrary to the extent permitted by law.

In the event that Facility Owner ultimately is determined to be responsible for the Relocation costs, then Facility Owner shall within 45 days from the date of such determination reimburse the Authority or the Authority's Contractor as directed by the Authority the full amount of all sums advanced that were determined to be the Facility Owner's cost responsibility, plus interest from the date advanced or disbursed by Authority and computed in accordance with Section 1268.350 of the Code of Civil Procedure.

3.6 Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Facility Owner of the claim and the Facility Owner will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Facility Owner and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Facility Owner under this Agreement, the Authority may withhold reimbursement to the Facility Owner until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.7 Disputes

The Authority and the Facility Owner agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HST Project impacting Facility Owner's Facilities a hierarchy of individuals within each Party's organization to whom issues



may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HST Project and the Facility Work.

In the event the Facility Owner disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Facility Owner shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve such potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If, within 14 days after conclusion of such partnering, the dispute persists, then the Facility Owner may request a written statement of the Authority concerning its decision. The request shall state clearly, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall reduce its decision to writing and provide notice of such decision, including a copy thereof, to the Facility Owner. Failure of the Authority to provide a written decision shall be deemed denial of Facility Owner's objection. The decision of the Authority shall be final and conclusive unless, on or before the 28th day from the date of receipt of such decision, or if no written decision is received from the Authority, 42 days from the Facility Owner's original written objection, the Facility Owner appeals such decision by written notice to the Authority.

In connection with any appeal of the Authority's decision, the Facility Owner shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall then, within two weeks from the date of the hearing, or if no hearing is requested, from the date of Facility Owner's notice of appeal, either issue a modified decision, or such prior decision shall be deemed affirmed. If the dispute still remains after such decision, then either Party may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration.

In the event either Party, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such election to arbitrate, the Parties will seek to appoint a panel of three arbitrators with not less than 10 years of experience each in complex construction disputes involving public works transportation projects. If the Parties cannot agree on a panel of three arbitrators, then each Party shall appoint one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 et seq. and the implementing regulations thereto. The decision of the arbitrators shall be binding on the Parties and any judgment on the award there rendered may be entered in the Superior Court for Sacramento County.



If it is determined, on appeal, that the Authority's interpretation of this Cooperative Agreement, direction to the Facility Owner, or any other action required by the Authority's decision was an erroneous determination of the rights and obligations of the Parties under this Cooperative Agreement, the Facility Owner's claim and any award by resolver of the dispute shall be limited to the incremental costs incurred by the Facility Owner with respect to the disputed matter as a direct result of such erroneous determination (crediting the Authority for any corresponding reduction in the Facility Owner's other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

At all times during the course of the dispute resolution process, the Facility Owner shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Cooperative Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Cooperative Agreement irrespective of the ultimate outcome of any dispute.

4 PERFORMANCE OF WORK

4.1 General

All Facility Work (design and construction phases) or portion thereof may be performed by the Facility Owner, the Authority or the Authority's Contractor. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in the Task Order for that work.

4.2 Facility Owner Performs Facility Work

When all or a portion of the utility work is to be performed by the Facility Owner, the Facility Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to:

- A. Perform work with its own forces, or
- B. Cause the work to be performed by a contractor, employed by Facility Owner on a continuing basis pursuant to a written contract, or
- C. Cause the work to be performed through a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Proceed, Facility Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's or the Authority's Contractor's schedule and/or timeline as specified in the Task Orders. The Facility Owner



agrees to be solely responsible for all costs to the Authority and/or the Authority's Contractor associated with any delay on the part of the Facility Owner in completing Facility Work in accordance with the schedule and/or timeline specified in the Task Order for that specific Facility Work.

The Facility Owner shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of Facility Work.

Pursuant to Public Works Case No. 2001-059 as determined by the California Department of Industrial Relations and dated October 25, 2002, work performed by the Facility Owner is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. Additionally, the Facility Owner shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto. The Facility Owner shall verify compliance with these requirements in the administration of its contracts referenced above.

4.3 Authority's Contractor Performs Work

When all or portion of Facility Work is to be performed by the Authority or the Authority's Contractor, the Facility Owner shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with Task Orders, however, all questions regarding the work being performed will be directed to the Authority or its authorized agent for evaluation and final disposition.

Upon the Authority's written Notice to Proceed, the Facility Owner shall consider the Authority's Contractor as acting on behalf of the Authority on all matters pertaining to the HST Project that are specifically identified in said notice and shall treat any direction given by the Authority's Contractor on those identified matters as if it were given by the Authority.

4.4 Insurance

The Facility Owner and the Authority and their respective officers and employees, as well as such other additional insureds as either the Authority or the Facility Owner shall reasonably require are collectively referred to herein as the "Additional Insured Group".

Any Design Contract, Construction Contract or Design/Build Contract entered into by the Authority or the Facility Owner in connection with Facility Work shall contain a provision which requires the contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general or automobile liability insurance that names as additional insureds to such policy the Additional Insured Group.



Unless otherwise mutually agreed upon by the Parties, the construction contractor, design contractors and design/build contractors shall provide evidence of at least:

- A. Commercial General Liability coverage, including coverage for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and more restrictive than the coverage provided by Insurance Services Office Form CG 00 01. There shall be no exclusion for fire legal liability (not less than the replacement value of the portion of the premises occupied), blanket contractual, independent contractors, premises operations, and work within 50 feet of a railroad. The coverage shall have an annual minimum limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- B. Automobile Liability, coverage including owned, hired and non-owned automobile liability with a combined single limit of at least \$2,000,000 per accident.
- C. Statutory Workers' Compensation including Employer's Liability insurance complying with the applicable Workers' Compensation laws, with a limit of at least \$1,000,000 per accident.
- D. If applicable, Railroad Protective Liability as required by any applicable railroad agreements.
- E. Insurance policies required to be provided by a contractor hereunder shall contain or be endorsed to contain the following provisions:
 1. Additional Insured Group, its members, directors, officers, employees and agents and such other parties as may be designated in writing shall, to the extent of Contractor's indemnity obligations contained in the General Provisions, be covered as additional insureds under Contractor's and subcontractor's commercial general and automobile liability policies.
 2. Each policy (including the Workers' Compensation and Employer's Liability policies) shall include a waiver of any right of subrogation against Additional Insured Group (and its members, directors, officers, employees and agents).

The minimum amounts of insurance specified above may be adjusted from time to time by Authority if commercially reasonable to do so.

Each policy of insurance and endorsement required to be provided by a contractor hereunder shall be in form and substance acceptable to Authority, in its sole discretion. Prior to commencement of work, a Certificate evidencing the required coverage and providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to the Facility Owner and the Authority shall be transmitted directly by the insurer to the Facility Owner and the Authority. The Facility Owner recognizes and agrees that all or part of



such insurance can be provided by the Authority through an owner-controlled insurance program.

4.5 Stakeholder Collaboration

In signing this Agreement, the Facility Owner agrees to collaborate with the Authority, the Authority's Contractor, and any other third-party entities affected by the HST Project, including regulatory agencies, local agencies, and public and private Facility Owners, hereinafter referred to as stakeholders, to identify collaborative methods for resolving issues that may arise as part of the HST Project and/or Facility Work in an effort to achieve a quality HST that meets the HST Project schedule and budget.

Stakeholders will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HST Project. During the initial workshop, stakeholders will develop procedures and agreements (including Task Orders) as specified in Appendix C, "STAKEHOLDER COLLABORATION," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise throughout the HST Project.

Reimbursement to the Facility Owner for the cost of participation in the initial workshop and subsequent stakeholder meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

Subject to the requirements of the Public Information Act and to the maximum extent permitted by law, neither the language of this clause, including the language in Appendix C, nor any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5 PAYMENT FOR WORK

5.1 Cost of Facility Work

Cost of Facility Work includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in Facility Work, except as follows:

- A. In any case in which the Authority is required under the provisions of this Agreement to pay its share of the cost of Relocation of any Facility by the Facility Owner, the Authority shall be entitled to credits as follows:



1. The amount of any Betterment to the utility Facility resulting from such relocation.
2. The salvage value of any materials or parts salvaged and retained by Facility Owner.
3. If a new utility Facility or portion thereof is constructed to accomplish such relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of FACILITY}}{\text{Normal expected Life}} \times \text{Original Cost}$$

- B. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to the Facility Owner.
- C. A credit allowance for age shall not be applied to publicly owned sewers.
- D. Eligible Facility Owner costs shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. Facility Owner agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at: <http://www.access.gpo.gov/nara/cfr/waisidx/cfr-table-search.html>

5.2 Payment for the Cost of Facility Work

If Facility Work is at the Authority's expense, then the Authority shall pay or cause payment to be made to the Facility Owner in the amounts as established for Facility Work performed by the Facility Owner, less the credits as determined. At the Authority's discretion, the responsibility for making such payments to the Facility Owner may be delegated to the Authority's Contractor; in such circumstances, the Facility Owner agrees to the Authority's delegation of responsibility to the Authority's Contractor to make reimbursement payments to the Facility Owner.

If Facility Work is at the Facility Owner's expense and is performed by the Authority or the Authority's Contractor, the Facility Owner shall pay or cause payment to be made to the Authority or the Authority's Contractor in the amounts established pursuant to this Agreement for Facility Work plus appropriate amounts for Betterments, salvage and expired service life. At the Authority's written direction given in its sole discretion, the Authority's Contractor may be authorized to accept such payment from the Facility Owner; in such circumstances, the Facility Owner agrees to the Authority's Contractor collection of reimbursement directly from the Facility Owner.



5.3 Invoicing Procedures

Invoicing procedures will be mutually agreed upon by the Authority, the Authority's Contractor and the Utility Owner and set forth in Task Orders.

6 GENERAL CONDITIONS

6.1 Deactivated Facilities

The Facility Owner's Facilities shall not remain in the Authority's right-of-way after Facilities are no longer active ("Deactivated"), unless specifically allowed for by the Authority in advance, and in writing. The following terms and conditions shall apply to Deactivated Facilities allowed to remain within the Authority's right-of-way:

- A. The Facility Owner acknowledges its present and continuing ownership of and responsibility for the Deactivated Facilities.
- B. If the Authority subsequently agrees to allow the Facility Owner to leave the Deactivated Facilities located within the right-of-way, it shall be subject to the continuing satisfactory performance of the conditions of this Agreement by the Facility Owner. In the event of a breach of this Agreement by the Facility Owner, the Deactivated Facilities shall be removed upon demand from the Authority.
- C. The Facility Owner shall take such steps to secure the Deactivated Facilities and otherwise make such Deactivated Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the Facility Owner to use due care in its dealings with others. The Facility Owner shall be solely responsible for gathering all information necessary to meet these obligations.
- D. The Facility Owner shall keep and preserve all records relating to the Deactivated Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Deactivated Facilities and shall promptly respond to information requests from the Authority concerning the Deactivated Facilities or other permittees using or seeking use of the right-of-way.
- E. The Facility Owner shall remove the Deactivated Facilities upon thirty (30) days prior written request of the Authority in the event that the Authority determines removal necessary for any of the following reasons: the Authority needs the use of the right-of-way, right-of-way is needed for other active Facilities that cannot be otherwise accommodated, or where the Deactivated Facility adversely affects safety and operation of the HST Project. In the event that the Deactivated Facilities would not have qualified for reimbursement under this Agreement, removal shall be at the sole cost and expense of the Facility Owner and without any right of the Facility Owner to object or make any



claim of any nature whatsoever with regard thereto. In the event that the Deactivated Facilities would have qualified for reimbursement, removal of the Deactivated Facilities shall be reimbursed by the Authority as though the Deactivated Facilities had not been Deactivated. In the event that the Facility Owner fails to perform the removal properly within the specified time, the Authority may proceed to perform the removal at the Facility Owner's sole expense.

- F. Except as otherwise provided in this Section 6, the Facility Owner agrees that the Deactivated Facilities shall forever remain the legal and financial responsibility of the Facility Owner. Except as otherwise provided in this Section 6, the Facility Owner shall reimburse the Authority for any and all costs of any nature whatsoever resulting from the presence of the Deactivated Facilities within the right-of-way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Deactivated Facilities or from the presence of any hazardous substance or material in the Deactivated Facilities or the discharge of hazardous substances or materials from the Deactivated Facilities.

6.2 Default

In the event that the Facility Owner breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through contractors and seek repayment for the cost thereof.

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Facility Owner may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either Party from any obligations it has pursuant to other agreements or Task Orders between the Parties, nor from any statutory obligations that either Party may have with regard to the subject matter hereof.

The Authority may unilaterally cancel this Agreement for refusal by the Facility Owner to allow access to all public documents, papers, letters, or other material that is made or received by the Facility Owner in conjunction with this Agreement.

If the HST Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by the Facility Owner, the Authority will notify the Facility Owner in writing, and the Authority reserves the right to terminate this Agreement by Amendment. The



Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

Notwithstanding any dispute, the Parties agree that they will continue their respective performances required hereunder, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any Party under this Agreement or any other agreement or Task Orders executed pursuant hereto, or otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Relocations may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the HST Project. Consequently, the Authority shall be entitled to specific performance in the event of any breach of this Agreement that imminently threatens to delay HST Project construction.

6.3 Force Majeure

Neither the Facility Owner nor the Authority shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by the following:

- A. Earthquake exceeding 3.5 on the Richter scale;
- B. Tidal wave;
- C. Epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion;
- D. Discovery at, near or on the Site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of such resources was not disclosed to the Facility Owner by the Authority of the Authority's Contractor;
- E. Lawsuit seeking to restrain, enjoin, challenge or delay construction of the Project or the granting or renewal of any Governmental Approval of the Project; or
- F. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence occurring within the vicinity of the Project where each participant in such occurrence is not a Facility Owner related entity

The foregoing events shall relieve a Party of liability only if the Party's failure to perform as a result of such event is beyond its control and not due to an act or omission of the Facility Owner related entity or the Authority and could not have been avoided by due diligence or use of reasonable efforts and the party claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent possible, and
- C. Resumed performance as soon as possible.

If any such event of Force Majeure occurs, the Facility Owner agrees, if requested by the



Authority, to accelerate its efforts if reasonably feasible in order to regain lost time, so long as the Authority agrees to reimburse the Facility Owner for the reasonable and actual costs of such efforts.

Force Majeure excludes:

- A. Fire or other physical destruction or damage, including lightning, explosion, drought, rain, flood, earthquakes equal to or under 3.5 on the Richter scale, hurricane, storm or action of the elements or other acts of God;
- B. Except as provided in C of the definition of Force Majeure above, explosion or malicious or other acts intended to cause loss or damage or other similar occurrence;
- C. Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence (unless all participants in such occurrence are not a Facility Owner related entity); and
- D. All other matters not caused by or beyond the control of the Authority or a Facility Owner related entity and not listed in the definition of Force Majeure above.

6.4 Facility Owner's Facility and Right-of-way

The Facility Owner's Facilities shall at all times remain the property of and be properly protected and maintained by the Facility Owner.

Whenever the Facility Owner's affected Facilities are to be relocated from the existing Right-of-way of Facility Owner to a new location that falls outside such existing Right-of-way of Facility Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities. For such Relocated Facilities, the Authority shall issue, or cause to be issued, to the Facility Owner, without charge to the Facility Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and the Facility Owner for those rights previously held by the Facility Owner in its existing right-of-way. In consideration for these replacement rights being issued by the Authority, the Facility Owner shall subsequently convey to the Authority, or its nominee, within the Authority's right-of-way, all of its corresponding right, title and interest within the existing Right of Way of Facility Owner so vacated.

If the existing Right-of-way of Facility Owner includes fee title, the Authority shall acquire from the Facility Owner, for just compensation under State law, those property rights required by the Authority for its Facilities by separate transaction, leaving to the Facility Owner those remaining property rights appropriate for the placement and operation of the Facility Owner's Facilities in the Right-of-way of Facility Owner.

Upon completion of Facility Work by the Authority, the Relocated Facilities shall become the



property of the Facility Owner.

6.5 Applicability

Except as otherwise provided in the following paragraph, this Cooperative Agreement applies to the Relocation of Facility Owner's Facilities to accommodate or permit construction of the HST Project.

Excluded Entities may perform construction activities related to the HST Project. Any activities undertaken by Facility Owner or Excluded Entities with respect to Facilities pursuant to arrangements made with Excluded Entities are specifically excluded from the terms and conditions of this Cooperative Agreement.

6.6 Agreement Final Expression of the Parties

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the Parties understand and agree that the Authority will have written policies and procedures which shall be applicable as written at the time of the contract award to Authority's Contractor. Copies of the Authority policies and procedures will be provided to the Facility Owner as soon as practicable after they become available. To the extent otherwise allowable pursuant to Title 23 C.F.R. Part 645, Subpart A, the Authority shall pay for any incremental costs incurred by the Utility Owner as a result of the application of Authority's policies and procedures that would not have been incurred pursuant to this Agreement absent such policies and procedures. This Agreement cannot be modified except by an instrument, in writing, signed by the Party to be charged.

6.7 Severability

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.8 Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Sacramento County, California.

6.9 Notices

All required notices may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided, in which case service is effective on the date of actual receipt. The Facility Owner shall have a



continuing obligation to notify the Authority of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to Facility Owner:

Facility Owner Name:

Person in Charge:

Address:

Facsimile Number

If to Authority:

Authority:

CALIFORNIA HIGH SPEED RAIL AUTHORITY

Person in Charge:

Thomas Fellenz, Chief Counsel

Address:

770 L Street, Suite 800

Sacramento, CA 95814

Facsimile Number

6.10 Wasted Work

The Authority will pay, in its entirety, that portion of the cost of Facility Work constituting Wasted Work. The remainder of the cost of that Facility's Relocation shall be borne pursuant to the cost allocation provisions defined in the Task Order for that work.

6.11 Hazardous Material

Upon discovery of Hazardous Material in connection with Facility Work, both the Facility Owner and the Authority's Contractor shall immediately confer to explore all reasonable alternatives and agree on a course of action, and the Facility Owner shall immediately reschedule the work in accordance with the Authority's Contractor reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

- A. The Authority will pay, in its entirety, those costs for additional necessary effort undertaken within the Authority's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of



that Facility Work, unless such conditions are attributable to the Facility Owner's existing installation or operation.

- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the Authority's right-of-way which is required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the Parties pursuant to the provisions of Section 5, "PAYMENT FOR WORK."
- C. Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

6.12 Successors and Assigns

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Parties. None of the rights, obligations or interests of either party under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Agreement to its successor or any entity acquiring all or substantially all of such party's assets.

6.13 Third Parties

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. This Agreement is not intended to affect the legal liability of Parties by imposing any standard of care for completing Facility Work different from the standards imposed by law.

6.14 State Funds

No state funds or resources are allocated or encumbered as against this Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed Task Order.

6.15 American Recovery and Reinvestment Act and the Authority

The provisions included in Appendix B, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent Task Orders.



6.16 Special Terms and Conditions

The provisions included in Appendix D, "SPECIAL TERMS AND CONDITIONS," are hereby incorporated in and are integral to this Agreement, and the Facility Owner shall ensure full compliance with these provisions in connection with this Agreement and subsequent Task Orders. References in such Special Terms and conditions to "Contractor" shall be deemed to refer to Facility Owner. The Dispute provisions in Section C of the Special Terms and Conditions are superseded by the Dispute process in Section 3.6 of this Agreement.

6.17 Appendices

Appendices A, B, C and D to this Agreement are attached hereto and incorporated by reference herein. This Agreement and the Appendices are intended to be complementary and shall, to the extent reasonably feasible, be interpreted so as to give force and effect to all provisions. In case of conflict between the provisions of this Agreement and those set forth in the Appendices, or between the provisions of the Appendices, the provision with the most stringent standard applicable to the party to be charged shall take precedence.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year first written.

FACILITY OWNER:

Signature

Date

Typed Name

Typed Title

Approval by the California High Speed Rail Authority

Signature

Date:

Typed Name

Typed Title

AUTHORITY Legal Review

Signature

Date:



Typed Name

AUTHORITY Legal Counsel

Typed Title

HSR13-06 - EXECUTION VERSION



Appendix 1: Design-Build Procedures

17. INITIAL COORDINATION

- A. The Facility Owner shall advise the Authority in writing of the place and the name and telephone number of a contact person for the Facility Owner who has charge over the Facility Work and will serve as the primary contact for the Facility Owner on all related issues.
- B. The Authority will compile information from the Facility Owner that will illustrate the nature and locations of the Facility Owner's existing Facilities. The Authority will present this information on a series of drawings and tables that will be used to determine conflicts with the HST Project.
- C. The Facility Owner will furnish markups to the Authority of their existing and proposed Facilities within 20 working days.
- D. The Authority will prepare preliminary design plans that indicate which utilities are to be relocated and conceptual arrangements of the relocated utilities.
- E. The Facility Owner will verify, to the best of its ability, the correctness and completeness of the plans prepared by the Authority.
- F. These plans will form the basis of subsequent design to be performed by the Facility Owner, the Authority or the Authority's Contractor, as the case may be; the Facility Owner shall take sole and full responsibility for the accuracy of its depicted Facilities.

18. PERFORMANCE OF THE FACILITY WORK (PERFORMANCE BY AUTHORITY'S CONTRACTOR)

The method of performance to be utilized in the design and construction of the Facility Work, as described below ("Method"), will be specified in the executed Task Order for the particular Facility Work contemplated.

The Facility Owner agrees to (a) the Authority's delegation to the Authority's Contractor, the responsibility to reimburse the Facility Owner, and (b) the Authority's Contractor's collection of reimbursement directly from the Facility Owner having cost responsibility for Facility Relocations and/or for Betterments.

Performance of the Facility Work shall be in accord with the following Method:

The Authority's Contractor performs all design and construction services for the Facility Work.



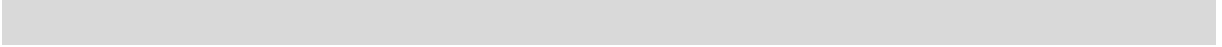
- A. At such time as the Authority's Contractor has the HST Project plans prepared to a level where the impact on the Facility Owner's Facilities and the nature and extent of the Facility Work can be determined, the Authority's Contractor shall prepare plans for the Facility Work (hereinafter referred to as "Facility Plans") and provide a copy of the Facility Plans to the Facility Owner in AUTOCAD and PDF format. The Facility Plans shall include a preliminary Facility Work design concept which was created by the Authority's Contractor and in accordance with the Facility Owner's standards.
- B. The Facility Owner shall have fifteen (15) working days from receipt of the Facility Plans to review them and provide comments, including any applicable technical requirements and standards, to the Authority's Contractor and the Authority. Failure to provide comments within such fifteen (15) working days shall be deemed approval.
- C. At such time as the Authority's Contractor has prepared final Facility Plans, including the Facility Work, the Authority's Contractor will provide a copy thereof to the Facility Owner. The final Facility Plans shall incorporate the comments of the Facility Owner provided such comments are reasonable and do not create inconsistencies with the contract between Authority and the Authority's Contractor. A detailed list of final method of inclusion of the Facility Owner's comments shall be provided to the Facility Owner by the Authority's Contractor.
- D. The Facility Owner shall have fifteen (15) working days from receipt of the final Facility Plans to review them and provide final comments to the Authority's Contractor. If the Facility Owner's comments are not fully addressed or incorporated, the Facility Owner shall return final Facility Plans for corrections and shall not be considered as final Facility plans by the Authority's Contractor. Failure to provide comments within the time period allowed shall be deemed as an approval.
- E. The Authority's Contractor shall make final corrections to the Facility Plans and provide a copy to the Facility Owner. This section shall not apply until paragraph 2.E of Appendix A is satisfied.
- F. The Authority's Contractor shall perform the construction services for the Facility Work in accordance with the Facility Plans.
- G. Deviations from the Authority's Contractor's Facility Plan initiated by the Authority, the Authority's Contractor or the Facility Owner, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original Facility Work. No deviation from the original Facility Work shall commence without a fully executed Amendment.



- H. The Facility Owner shall be entitled to have representatives on the site of the HST Project to verify that the Facility Work is being properly performed by the Authority's Contractor. The Facility Owner's representatives shall at all times comply with all of the Authority's Contractor's work rules and regulations while on the HST Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the Authority's Contractor shall have the exclusive right to prohibit the representative from access to the HST Project Site thereafter.
- I. Upon completion of the Facility Work, the Facility Owner agrees to accept ownership and maintenance of the constructed Facilities.
- J. The process established above shall apply separately to each phase or segment of the HST Project, as established in accordance with the agreement between the Authority's Contractor and the Authority.
- K. The Authority's Contractor shall provide the Facility Owner with as-built drawings of Facility Work outside the Authority's right-of-way. The as-built drawings shall be in AUTOCAD and PDF format for that particular Facility Work.

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Appendix 2: ARRA and Authority Provisions

- SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS
- CCC 307 – CERTIFICATION
- GTC 610
- SPECIAL TERMS AND CONDITIONS

If any term or condition in Appendix B conflicts with any term or condition elsewhere in the Cooperative Agreement, the term or condition in Appendix B will apply.

DEFINITIONS

As used in this Appendix B, the following term has the following meaning:

“Contractor” means Facility Owner. The Facility Owner, however, is not a contractor.

“State” includes Authority.

HSR13-06 - EXECUTION VERSION



SUPPLEMENTAL TERMS AND CONDITION FOR CONTRACTS USING ARRA FUNDS**19.ARRA FUNDED PROJECT:**

Funding for this contract has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

20.ENFORCEABILITY:

Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

21.PROHIBITION ON USE OF ARRA FUNDS:

Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

22.REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:

Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with the United States obligations under international agreements. The contractor understands that these requirements may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

23.WAGE RATE REQUIREMENTS:

In accordance with ARRA, Section 1605, the Contractor assures that it and its sub-recipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subconsultants on project funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less



than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganized Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

24.INSPECTION OF RECORDS:

In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- 1) Examine any records that directly pertain to, and involve transactions relating to, this contract; and
- 2) Interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.

25.WHISTLEBLOWER PROTECTION:

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- 1) Gross mismanagement of a contract relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.



Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

26.FALSE CLAIMS ACT:

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

27.REPORTING REQUIREMENTS:

Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:

- b. The total amount of ARRA funds received by Contractor during the Reporting Period;
- c. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- d. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including
 - i. The name of the project or activity;
 - ii. A description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity;
- e. For any contracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;



- v. The Program source
- vi. An award title descriptive of the purpose of each funding action;
- vii. The location of the entity receiving the contract;
- viii. The primary location of the contract, including the city, state, congressional district and county;
- ix. The DUNS number, or name and zip code for the entity headquarters;
- x. A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
- xi. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1) 80% or more of its annual gross revenues in Federal awards;
 - 2) \$25M or more in annual gross revenue from Federal awards and;
 - 3) If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- f. For any contract of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation

Standard data elements and federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this contract(s).



CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

| | | |
|--|---------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | | Federal ID Number |
| By (Authorized Signature) | | |
| Printed Name and Title of Person Signing | | |
| Date Executed | Executed in the County of | |

CONTRACTOR CERTIFICATION CLAUSES**1. STATEMENT OF COMPLIANCE:**

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:



- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.



6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.



GTC 610**GENERAL TERMS AND CONDITIONS****1. APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT:

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT:

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.



6. DISPUTES:

Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR:

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and



made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11.CERTIFICATION CLAUSES:

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12.TIMELINESS:

Time is of the essence in this Agreement.

13.COMPENSATION:

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14.GOVERNING LAW:

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15.ANTITRUST CLAIMS:

The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.



- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16.CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)



SPECIAL TERMS AND CONDITIONS

21.AMENDMENT (CHANGE IN TERMS)

- c. The Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided in writing by the Authority's Contract Manager.
- d. There shall be no change in the Contractor's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Authority's Contract Manager. If the Contractor obtains approval from the Authority's Contract Manager to add or substitute personnel, the Contractor must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

22.TERMINATION

This section regarding termination is in addition to GTC 610.

- c. The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days written notice to the Contractor if terminated for the convenience of the Authority.
- d. The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Authority may proceed with the work in any manner deemed proper by the Authority. All costs to the Authority shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

23.EARLY TERMINATION OF THIS AGREEMENT OR SUSPENSION OF THIS AGREEMENT

General Conditions

- c. In the event this Agreement is terminated, suspended, or a Work Plan is terminated for the convenience of the Authority, the Contractor shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.



- d. Within 30 days of the date the Contractor is notified of the early termination of Work Plan(s) issued against this Agreement for the convenience of the Authority, the Contractor shall prepare and submit to the Authority's Contract Manager, for approval, two (2) separate supplemental cost proposals:
 - i. A final revised cost proposal for all project-related costs for the revised termination date.
 - ii. A cost proposal specifically addressing the termination settlement costs only.

24.CONTRACTOR'S DELIVERABLES UNDER EARLY TERMINATION

The Contractor shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by the Authority, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Contractor and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

25.INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Contractor is notified of acceptance of the final cost proposals by the Authority's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

26.TERMINATION ISSUES FOR SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

The Contractor shall notify any Subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subcontractor and service or supply vendor shall result in the Contractor being liable for the



termination costs incurred by any Subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Contractor.

27.AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Appendix D, Audit Review Procedures, section 10 below.

28.CONTRACTOR CLAIMS AGAINST THIS AGREEMENT UNDER EARLY TERMINATION

The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

29.RETENTION OF RECORD/AUDITS

- c. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Contractor, Subcontractors, and the Authority shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of expenditure under this Agreement. The Authority, the State Auditor, or any duly authorized representative having jurisdiction under any laws or regulations shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- d. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

30.AUDIT REVIEW PROCEDURES

- d. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Project Manager.



- e. Not later than 30 days after issuance of an interim or final audit report, the Contractor may request a review by the Project Manager of unresolved audit issues. The request for review will be submitted in writing to the Chief Executive Officer. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the Chief Executive Officer will be scheduled if the Project Manager concurs that further review is warranted. After the meeting, the Project Manager will make recommendations to the Chief Executive Officer will make the final decision for the Authority. The final decision will be made within three (3) months of receipt of the notification of dispute.
- f. Neither the pendency of a dispute nor its consideration by Authority will excuse the Contractor from full and timely performance, in accordance with the terms of this clause.

31. PURCHASE OF EQUIPMENT

No equipment identified in this Agreement is approved for purchase.

32. INSPECTION OF WORK

The Contractor shall permit the Authority to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

33. OWNERSHIP OF DATA

- e. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in the Authority and no further agreement will be necessary to transfer ownership to the Authority. The Contractor shall furnish the Authority all necessary copies of data needed to complete the review and approval process.
- f. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- g. The Contractor is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the Authority of the machine readable information and data provided by the Contractor under this agreement; further, the Contractor is not liable for claims, liabilities or losses arising out of, or connected with, any use by the Authority of the project documentation on other projects, for additions to this project, or



for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Contractor.

- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

34.CONFIDENTIALITY OF DATA

- f. All financial, statistical, personal, technical, or other data and information relative to the Authority's operations, which is designated confidential by the Authority and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- g. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- h. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or the Authority's actions on the same, except to the Authority's staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- i. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Authority and receipt of the Authority's written permission.
- j. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than the Authority.

35.STATEMENT OF COMPLIANCE

The Contractor's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

36.DEBARMENT AND SUSPENSION CERTIFICATION

- c. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:



- iii. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - iv. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - v. Does not have a proposed debarment pending; and
 - vi. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- d. Any exceptions to this certification must be disclosed to the Authority. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

37.CONFLICT OF INTEREST

- e. During the term of this Agreement, the Contractor shall disclose any financial, business, or other relationship with Authority that may have an impact upon the outcome of this Agreement or any ensuing Authority construction project. The Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Authority construction project which will follow.
- f. The Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- g. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code.
- h. Any sub agreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.



Appendix 3: Stakeholder Collaboration

In order to accomplish the HST Project through the most effective means available, a collaborative relationship will be formed as agreed to by Parties in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this collaborative relationship, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Stakeholders to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HST Project the Stakeholders agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HST Project:

“Issues Resolution Ladder” (IRL) – a hierarchy of those individuals within the HST Project including the Stakeholders and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

“Stakeholder Implementation Plan” (SIP) – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Stakeholders.

“Stakeholder Charter” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all Stakeholders.



2. STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the HST Project issues.

